



REPUBLIC OF SLOVENIA
ADVOCATE OF THE PRINCIPLE OF EQUALITY

2021

Annual Report
CASE REVIEW



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Ljubljana, April 2022



Miha Lobnik, Advocate of the Principle of Equality

Foreword by the Head of the Institution, Advocate of the Principle of Equality

The Annual Report for 2021 consists of two parts. The Systemic Overview which represents Part One of the Annual Report presents a review of the functioning of the equality body in the past year, both at the level of individual cases and at the societal level. Statistical data on the work performed in the past year show a wide range of tasks carried out by the Advocate in the field of equality, equal opportunities and equal treatment.

The Case Review which represents Part Two of the Annual Report focuses in more detail on the outputs of the Advocate's work trying to answer the question of why someone was subject to less favourable treatment. The cause may be one or several of the individual's personal grounds that represent such characteristics that are not chosen by that individual himself, e.g., gender, age, disability, etc. Additionally, the addressed cases also reveal the social sphere in which discrimination has occurred.

Moreover, the report also presents cases in which people claimed they were discriminated against, yet the Advocate did not identify the essential conditions to confirm discrimination as defined by the Slovenian anti-discrimination law - the Protection Against Discrimination Act (PADA). These are important social issues, which cannot be addressed by the Advocate within the scope of its powers under the law. However, we present them in the Report because although they do not meet the legal definition of discrimination, they represent important social challenges that need to be addressed by the society.

In 2021, the Advocate's work was significantly affected by the spread of covid-19. Due to the hardship of the Slovenian people, the Advocate provided advisory assistance, received and addressed several complaints of discrimination and prepared a greater number of reports with recommendations for improving the situation in the field of protection against discrimination. The Report shows that in spite of the challenging situation, we managed to successfully address the hardships of individuals in cooperation with the state and civil society.

The Annual Report for 2021 comprehensively presents the Advocate's contribution to a society of equal opportunities. I would hereby like to thank all my colleagues for their professional and committed work. I would also like to thank all those who continue to support the functioning, activities and development of the Advocate of the Principle of Equality.

Miha Lobnik
ADVOCATE OF THE PRINCIPLE OF EQUALITY

Ljubljana, April 2022

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1 PERSONAL GROUNDS OF DISCRIMINATION

The following is an overview of the work and results by personal grounds of discrimination as listed in the Protection against Discrimination Act (PADA).

According to the PADA, the personal grounds are as follows: gender, nationality, racial or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, property status, education or any other personal ground.

This Chapter presents the essential results of the Advocate's work:

1. advisory, informing and supporting activities;
2. discrimination investigation;
3. assessing the discriminativeness of regulations;
4. recommendations by the Advocate;
5. education and awareness raising by the Advocate;
6. the Advocate's cooperation with civil society.

Article 2 of the PADA defines the areas of social life in which the prohibition of discrimination must be ensured by state authorities, local communities, holders of public authority and legal and natural persons. The following colours indicate the relevant areas of life (case number):

Work and employment

- Access to employment, self-employment and profession (including selection criteria and employment conditions, notwithstanding the type of activity or the level of occupational hierarchy, including promotion);
- access to all forms and all levels of career orientation and counselling, vocational and professional education and training, further vocational training and retraining, including internship;
- employment and working conditions, including termination of employment contracts and wages;

Membership in workers' or employers' organisations

- membership and inclusion in workers' or employers' organisations or any organisation whose members perform a certain vocation, including benefits provided by such organisations;

Social rights

- social protection, including social security;
- social benefits;

Health care

- health care;

Education

- education and schooling;

Goods and services market

- access to goods and services available to the public, including housing facilities and supply thereof;

Other

- This area includes cases that cannot be categorised within any of the above categories and cases that address all areas simultaneously or consider the general area of protection against discrimination.



1.1 Gender

1.1.1 Advisory, informing and support activities related to the personal ground of gender

Less favourable treatment of women in the workplace and prejudice regarding women's inadequacy for technical professions all suggest possible discriminatory treatment

Due to alleged discrimination in the workplace, the Advocate was approached by two employees working for different employers. The first described a transfer to another workplace, the conclusion of a new fixed-term contract and threats by her superior when applying for the position of analysis engineer in the technical sector of the company, which was reserved for her male colleague. The other one described her primary work under the employment contract and the required training for work on machinery, alleging that her employer refused to conclude a "contract for an engineer" with her because she is a woman, even though she is actually performing the work. The Advocate explained to the clients that, in addition to a number of international instruments, discrimination in the area of employment relations is also prohibited by the PADA and the labour law legislation. The Slovenian legislation stipulates in advance and in a way that is clear and unequivocal that all situations of unfavourable treatment of the female individuals based on the personal ground of gender are considered illegal, prohibited and discriminatory. The Advocate presented the clients with the available legal possibilities and informed them about the reverse burden of proof. The clients have not decided to launch the proceedings before the Advocate. Hence, the advisory proceedings were concluded. **(0702-57/2021, 0702-163/2021)**

Questions involving the issue of family planning are not permissible in the process of selecting candidates for a working position

The Advocate was approached by a candidate involved in a selection procedure for a working position with a particular employer. She asked whether an employer has the right to ask her questions regarding family planning, at the job interview. The Advocate explained that such questions are not admissible. In the present case, the personal grounds of gender, pregnancy and parenting were recognised as the basis for the individuals right to protection against discrimination, nevertheless, the Advocate pointed out to the client that the existence of discrimination can only be established following an administrative procedure of discrimination investigation. The Advocate explained the procedure to the client and asked them to describe the events in a precise and specific manner. In order to initiate the discrimination investigation procedure, the client must submit a signed proposal requesting discrimination investigation. The client did not decide to carry on with the proceedings following the provided advisory assistance. The advisory procedure has thus been completed. **(0702-275/2021)**

The aspect of discrimination in the collection of personal and other data by employers

The Advocate was approached by an elderly employee of a company regarding a questionnaire submitted to her by the employer. The questionnaire was sent only to female elderly employees, although elderly male employees are also part of the team. The employee considered that the questionnaire was not correct in terms of personal data protection and asked for advice. The Advocate explained to the client that the protection of personal data falls within the competence of the Information Commissioner, however the area of personal data linked to a particular personal ground (the client referred to the personal grounds of gender and age) may also be related to protection against discrimination. The Advocate encouraged the client to reach out to the equality body again if elderly female employees were to be treated less favourably in the employment relationship due to the questionnaire or due to the refusal to complete the questionnaire or otherwise (compared to elderly male workers or compared to younger employees regardless of gender). The advisory procedure has thus been completed. (0702-162/2021)

Christmas bonus linked to the employee's attendance at workplace may constitute inadmissible discrimination

Several clients approached the Advocate claiming that they were not granted a Christmas bonus or company performance bonus due to lower attendance at workplace in relation to parental leave or received a relatively lower Christmas bonus. The Advocate has informed the parties of the anonymised decisions in which he has already taken the view that the criteria for determining eligibility and the share of a merit or Christmas bonus, which are linked to the presence of an individual employee at work, violate the prohibition of indirect discrimination. However, if the criteria explicitly state that employees who were absent due to a sick leave or parental leave receive a lower Christmas bonus, it is a matter of direct discrimination. The protected personal grounds on the basis of which discrimination occurs vary in these cases, e.g. health status, pregnancy, parenting and gender, as mainly women use parental leave and men use paternity leave. The Advocate advised the client to contact the employer with the presented arguments, and if they would like the Advocate to initiate discrimination investigation to lodge a complaint and enclose documentation supporting their allegations. In two cases, the clients decided not to initiate the procedure. Other cases in which the parties have decided to initiate proceedings are presented under points 1.12.2. and 1.13.2. (0702-144/2020, 0702-163/2020)



The Collective Agreement for the Education Sector in the Republic of Slovenia does not follow the trends of pension legislation in the area of gender equality

The Advocate was approached by a client in regards to the alleged discrimination under Article 62 of the Collective Agreement for the Education Sector in the Republic of Slovenia. This Article stipulates that the teaching obligation shall be reduced by two hours after 35 years of work for men and after 30 years of work for women. In practice, the effect of such a provision is that men are entitled to a lower salary for the same number of hours of teaching compared to women. The Advocate noted that the provision of the collective agreement follows the 1992 pension legislation which is however inconsistent with new trends in this area. The Advocate explained to the client that his findings could not formally interfere with the collective bargaining between employers and employee representatives or the content of collective agreements. Upon the completion of the advisory procedure, the Advocate addressed a recommendation to the Ministry of Education, Science and Sport and representative trade unions responsible for education sector, to amend Article 62 of the Collective Agreement for the Education Sector. No response to the recommendation was received. The advisory procedure has thus been completed. [\(0702-16/2021/2\)](#)

Different percentage for determining the pension for men and women

The Advocate was approached by two clients who alleged discrimination against men in relation to the percentage for determining the pension under the Pension and Disability Insurance Act (PDIA-2). The Advocate explained to the clients that the equality body has already taken the view in regards to the question under consideration in the discriminatory assessment of the act amending the Pension and Disability Insurance Act (PDIA-2) No. 050-4/2019, in which it was assessed that the difference in the percentages does not constitute direct discrimination of men compared to women, but represents an exception to the prohibition of discrimination. The Advocate added that this was a specific incentive measure to prevent indirect discrimination against women. The assessment followed the decision of the Constitutional Court U-I-298/96 of 11 November 1999, which stated, inter alia, that formal equality would lead to inequality due to the actual differences between men and women. In providing for different treatment of men and women, the legislator took into account the disadvantaged social situation of women, which stems from traditionally and historically conditioned different social roles of the genders. The Advocate also drew the client's attention to the gender pay and pension gap, which show the actual economic and social differences between them. Nevertheless, progressive promotion of equality between men and women must be pursued: when the differences in the economic and social situation of women and men are no longer present or are substantially reduced, there will be no need for altered legislation. The advisory procedure has thus been completed. [\(0702-162/2020/2, 0702-292/2021\)](#)

1.1.2 Discrimination investigation in relation to the personal ground of gender

Discrimination against a civil servant on grounds of maternity leave in the annual performance review

The Advocate of the Principle of Equality has identified discrimination against a civil servant in the award of the annual performance review. Her superior also took into account her absence related to maternity leave in the annual performance review. Hence, the employee was treated less favourably due to the personal grounds of parenthood and gender. Based on a statistical analysis, which showed an obvious causal link between absence/attendance at workplace and the performance review of the vast majority of employees of a specific public institution, the Advocate found discrimination in this case. Based on the case under consideration and the possibility that the criterion of absence at work in the time of annual performance evaluation be applied in state authorities and other public institutions, the Advocate recommended that the Ministry of Public Administration, in accordance with its competence under the second indent of Article 21 of the PADA, shall address a circular letter to all state authorities and public institutions stating that poor performance review in connection to justified absence from work constitutes indirect discrimination, which is legally prohibited, and that persons responsible for assessing employee performance must consider this fact when preparing the annual performance reviews of employees. The recommendation was implemented by the ministry. The violator appealed against the Advocate's decision with the Administrative Court where the proceedings are still pending. (Decision No. **0700-26/2020/41** of 1 July 2021)

Refusal to give consent to the promotion of a researcher due to failure to meet the condition of successfully completed mentoring is not discriminatory

The Advocate received a complaint in which the complainant stated that she was denied promotion to the position of a Senior Research Associate by the Scientific Council of the Slovenian Research Agency (hereinafter: SRA) for failure to meet the required criterion of mentoring activity. The complainant considered the opinion of the SRA to be unjustified, since the decision of an early-stage researcher, whom she was mentoring, to become a mother and who has otherwise carried out her obligations timely and successfully and would otherwise complete her doctorate, should not represent an obstacle in the promotion of her mentor, as long as the society we live in is a society of equal opportunities. The complainant relied on Article 33 of the Rules on Conditions and Procedures for the Advancement of Researchers at the Research Center of the Slovenian Academy of Sciences and Arts (hereinafter: RCSASA), which allows promotion without fulfilling one criterion, while repeatedly exceeding other criteria. The SRA denied issuing the consent stating as reason that the successful completion of the mentoring activity is a criterion that cannot be overlooked in the progression regardless of the exceeding of other criteria. In the procedure, the Advocate found that the SRA, within its discretionary power granted by the Rules on Research Titles, indeed has the right to conclude that unfinished mentoring can not be overlooked when checking the fulfilment of the stated conditions. Failure to exercise discretion does not imply that the SRA violated the regulations or treated the applicant unequally compared to other candidates. Nor does exceeding other criteria establish the complainant's right that the failure to comply with one of the conditions is to be overlooked. In view of the above, the Advocate did not find any discriminatory conduct. The decision has become final. (Decision No. **0700-40/2020/12** of 7 September 2021)



After the intervention of the Advocate, the employer ensured that it observes the principle that advertisements must be gender-neutral

The Advocate was informed by a third party about a job advertisement inviting women to work in a café. The Advocate initiated the procedure of discrimination investigation under Article 34 of the PADA. During the case it was found that the café was no longer in operation, the advertisement was withdrawn and information on the owner of the café were not obtainable. In line with paragraph 4 of Article 135 of the General Administrative Procedure Act, an authority may suspend a procedure initiated ex officio if the conditions for its conduct are no longer fulfilled, or if the authority considers, depending on the circumstances of the case, that public interest in its continuation no longer exists. In view of the above-stated, the Advocate issued a decision to terminate the proceedings of discrimination investigation under PADA. The decision has become final. (Decision No. **0700-32/2021/8** of 24 November 2021)

Following an intervention by the Advocate, the Employment Service of Slovenia began training professional associates to identify and eliminate discriminatory criteria in job advertisements

The Advocate was informed by a third party of a questionable job advertisement. A job vacancy notice was published on the website of the Employment Service of the Republic of Slovenia stating that a company is looking for a male dispatcher. The Advocate initiated, ex officio, a procedure of discrimination investigation. In the procedure, the Advocate found that the condition of male gender was not provided for by the company, however it was added by the Employment Service of the Republic of Slovenia. Furthermore, the Employment Service of the Republic of Slovenia explained that the reason was an error of technical nature by the institution during the process of referring unemployed persons to the dispatcher vacancy. The Service stated that such irregularities are to be avoided in the future, as the staff will be even more attentive to any possible irregularities and additional attention of professional associates will be drawn to the possibility of such anomalies during the next professional training. Following the clarifications by the company and the Employment Service of the Republic of Slovenia, the Advocate assessed that the continuation of the discrimination investigation procedure in this case was no longer justified, as it turned out that the company did not really set such a questionable condition. Thus, the Advocate issued a decision to terminate the proceedings of discrimination investigation under PADA. The decision has become final. (Decision No. **0700-42/2021/8** of 24 November 2021)

1.1.3 Assessments of discriminativeness of regulations with regard to the personal ground of gender

The difference in the percentage for the calculation of pension with regard to gender is not discriminatory

The Advocate received two complaints in which the complainants allege that discrimination of men in comparison to women took place in terms of the percentage for the calculation of old-age pension amounts. By amending Article 37 of the Pension and Disability Insurance Act (PDIA-2) on 1 January 2020, the annual gradual equalisation of percentages for the assessment of old-age pension for men and women began, while on 1 January 2025, the equalisation of the percentages for both genders will be achieved. Until then, the percentage for men with the same insurance period will still remain lower compared to the percentage for women, although this difference will be lower each year. The Advocate has already taken a position on this topic within a discrimination assessment No. 050-4/2019 of 19 September 2019, stating that the gender gap did not represent direct discrimination of men compared to women, but rather an exception to it. The setting of higher percentages for the assessment of old-age pension for women was, and continues to be, in fact a relatively long-lasting positive measure to prevent indirect discrimination against women compared to men. Currently, this measure is being phased out by reducing the gap, assuming that indirect discrimination against women is also being effectively eliminated. In the assessment, the Advocate followed the decision of the Constitutional Court of 11 November 1999 No. U-I-298/96. The complainants also highlighted a disadvantage in relation to the different percentages applicable at different periods. Regarding the above, the Advocate explained that the situations of persons who retire or have retired in different periods when different legal regulations (PDIA, PDIA-1, PDIA-2 – as amended) on the calculation of old-age pension and different percentages applied cannot in fact be comparable. Namely, these groups are not in a comparable situation as required by PADA for discrimination to be found. In view of the above, the Advocate decided not to carry out a more detailed discriminatory assessment. The discriminatory assessment procedure has thus been completed. (050-10/2021/6)

1.1.4 The Advocate's recommendations regarding the personal ground of gender

Recommendation aimed at the Draft Act Amending the Companies Act

A recommendation to the National Assembly was made by the Advocate that a binding mechanism for ensuring gender balance in the management and supervisory bodies of companies be provided for in the Draft Act Amending the Companies Act. It was pointed out to the legislator that Slovenia has been subject to particular setbacks in this area in recent years. (007-4/2019/3)

Recommendation status: ● Not taken into account.¹

¹ Status of the recommendation by the finalisation of the Annual Report for 2021 (31. 3. 2022).



Recommendation to equalise the position of men and women in Article 62 of the Collective Agreement for the Education Sector in the Republic of Slovenia

It was recommended by the Advocate that Ministry of the Environment and Spatial Planning (MESS), together with the representative trade unions, should amend Article 62 of the Collective Agreement in a way as to equalise the situation of male and female educators, assistant educators, guardians, teachers and higher education lecturers with regard to teaching obligations, as for five years men have been entitled to a lower salary for the same number of hours of work compared to women. (0702-16/2021/2)

Recommendation status: ● Pending.

Recommendation on legal protection of female workers who have recently given birth and have concluded an employment contract of definite duration

It was recommended that the MLFSAEO should strengthen the protection of female workers who have recently given birth and have concluded an employment contract of definite duration. In particular, a more effective legal protection of victims of discrimination based on gender and other forms of discrimination against women and men in employment relationships was advocated. Moreover, exploring various possible solutions for safer and continuous employment was recommended. (0709-20/2021/1)

Recommendation status: ● Taken into account.

Recommendation on performance review of civil servants

It was recommended that MPA should address a circular letter to all state authorities and public institutions stating that poor performance review in connection to justified absence from work constitutes indirect discrimination, which is legally prohibited, and that persons responsible for assessing employee performance must consider this fact when preparing the annual performance reviews. (0700-26/2020/42)

Recommendation status: ● Taken into account.

Recommendation regarding the unethical reporting by the Večer newspaper

In light of the awareness-raising role of the Advocate, a recommendation was given to the newspaper Večer to reclassify the article on the alleged sexual assault from the “Entertainment” section to a more relevant section. (0705-1/2021/3)

Recommendation status: ● Taken into account.

Recommendation regarding the Draft Resolution on the National Programme for Equal Opportunities for Women and Men 2021–2030

It was recommended that the MLFSAEO should eliminate legal shortcomings in the definition of the prohibition of discrimination on grounds of gender. Moreover, it was recommended that measures to increase transparency in ensuring equal pay for comparable work and in strengthening the effectiveness of protection in case of infringements be taken. (0709-19/2021/1)

Recommendation status: ● Partially taken into account by setting out political and normative measures and amending the Criminal Code.

Recommendation on the Draft Act Amending the Criminal Code

The Advocate recommended to the members of the National Assembly to adopt the Act which would change the definition of rape and sexual violence in accordance with the affirmative consent model, that is the “yes means yes” model. (0070-7/2021/1)

Recommendation status: ● Taken into account by adopting the amended act.

Recommendation on video content of Kranj Police Directorate

It was recommended that the Kranj Police Directorate ceases to contribute to the strengthening of gender stereotypes in the future through its social media posts. It was also recommended that when publishing content, its suitability be also examined in terms of prevention of discrimination. (0702-290/2021/2)

Recommendation status: ● Pending.

1.1.5 The Advocate’s educational and awareness-raising activities with regard to the personal ground of gender

Panel discussion on violence against women

On 25 May 2021, a representative of the Advocate attended the event “Hostility in the speech leads to violence in action – stop violence against women!”, held by the Association SOS call centre for women and children – victims of violence. The participants discussed a number of outstanding issues, such as how to understand the rise of hostility and hate speech towards women, what is the boundary between freedom of speech and hate speech, whether violence has increased during the Covid-19 epidemic and what has contributed to these changes. The Head of the Advocate addressed the forms of discrimination as defined by the PADA, in particular the issue of incitement to discrimination. He drew attention to issues related to fulfilling the tasks assigned by the PADA, in particular inspection powers and the inability to sanction all violations, e.g., incitement to discrimination. He also highlighted the problem of the lack of empirical data on hate speech and outlined the problem of reluctance to record disaggregated data on hate crimes.

Presentation of the Advocate to members of the Consultative Body for Gender Mainstreaming within the Ministry of the Interior and bodies under the Ministry

On 23 November 2021, representatives of the Advocate prepared an online presentation of the Advocate’s competences and work focusing on the topic of gender equality which was intended for approximately 20 members of the Consultative Body for Gender Mainstreaming within the Ministry of the Interior, the Police and the Inspectorate of the Interior. In addition to systemic aspects, in particular the recommendations, they also presented a practical illustration of gender discrimination cases addressed. They explained how the discrimination investigation procedure is conducted and presented some current cases and data on the statistics of the cases of alleged discrimination on the ground of gender addressed within the Advocate’s practice.



1.1.6 The Advocate's cooperation with civil society with regard to the personal ground of gender

The Advocate met with an independent group of female students to discuss the issue of prevention and addressing of sexual harassment and sexual violence

On 30 April, two associates of the Advocate met with the members of Rezistenca. This is an informal and self-organised, independent group of female students working towards systemic changes in the prevention and addressing of sexual harassment and sexual violence in educational institutions and in society at large. They brought up the shortcomings of the Higher Education Act in terms of prohibition of sexual discrimination, which fails to address the protection of students from sexual discrimination in the same way as it does faculty employees, under the Employment Relations Act. At the same time, difficulties were presented in providing assistance to adult students who, in their opinion, do not have a systemic possibility of assistance and support in cases of sexual harassment or violence by professors. The members of Rezistenca also highlighted the lack of awareness of gender relations and sexual relations at all levels of the school curriculum. The representatives of the Advocate explained the competences of the equality body, procedures it conducted and how the victims of sexual harassment can turn to the Advocate for help.

1.2 Nationality

THE ADVOCATE HIGHLIGHTS

Article 61 of the Constitution of the Republic of Slovenia
(Expression of National Affiliation)

Everyone has the right to freely express affiliation with his nation or national community, to foster and give expression to his culture, and to use his language and script.

1.2.1 Advisory, informing and support activities related to the personal ground of nationality

In order to establish discrimination, a personal ground must be the reason for poor or less favourable treatment

The Advocate was approached by a client in relation to possible discrimination in the workplace. The client maintained in this respect that she was subject to less favourable treatment due to union membership (the client held the position of union president) and due to her nationality. She explained her situation during the first and second wave of the coronavirus epidemics, when she did not know whether she is supposed to perform her work from home, is she temporarily laid off or whether she should use the annual leave. Later, she was temporarily laid off while the rest of her colleagues were allowed to work from home, which she perceived as discrimination. The Advocate explained that, in determining discrimination, there must be a causal link between a personal ground and the disadvantaged situation, and the client must demonstrate it accordingly. The mere fact that a client is part of a non-majority nationality does not automatically make the conduct discriminatory. The client was informed about the Advocate's options to take action in cases of discrimination. The advisory procedure has thus been completed. [\(0702-142/2020\)](#)

The allegations of discrimination which reportedly took place in proceedings before the Centre for Social Work must be challenged using the legal remedies available against the issued decision

On behalf of a family having an international protection status, the Advocate was approached by a non-governmental organisation in relation to a possible illegal conduct by the Centre for Social Work, which was allegedly based on the nationality of the family. The Centre for Social Work rejected the application of the family for financial social assistance, child allowance, payment of contributions for compulsory health insurance up to the full cost of health services as well as exceptional social assistance. Such conduct was, according to the NGO, discriminatory.



The Advocate explained that the equality body is not allowed to intervene in proceedings before other competent authorities and to judge the legality of their actions. The NGO was informed that any illegalities and discrepancies in the conduct of the Centre for Social Work should be addressed within the legal remedies available in the context of the specific procedure, also in accordance with the principle of non-discrimination. The advisory procedure has thus been completed. (0702-160/2020)

Learning support to immigrant pupils may represent a positive measure to ensure equality

The Advocate was asked for assistance by an individual wishing to provide learning support to immigrant pupils. Her proactive action and desire to provide such assistance to pupils who due to their personal grounds represent a particularly vulnerable group of children, was welcomed by the Advocate. Regardless of the starting position of the immigrant children, when they enter the Slovenian educational system, their legal status is equal to the status of all children involved. However, for most immigrant pupils, specific assistance measures are needed to enable this vulnerable group of children to be effectively integrated into the existing education system. The Advocate has identified the provision of learning assistance to immigrant pupils as a special measure to ensure equality in accordance with Articles 17 and 18 of the PADA, which is implemented with the aim of supporting immigrants in the process of integration. The Advocate advised the client to engage with other stakeholders which are already active in the field and directed her to a volunteer training provided by NGOs. The advisory procedure has thus been completed. (0702-289/2021)

1.2.2 Discrimination investigation in relation to the personal ground of nationality

No discrimination was found in the case of rejected money transfer to a third country

The Advocate received a complaint by a complainant who was allegedly subject to unequal treatment in an attempt to transfer money to Lebanon and that the Bank treated him unequally on the basis of his nationality. The complainant wanted to transfer some money to his brother through a particular bank. When the employee initiated the money transfer procedure using the Western Union International Money Transfer Banking Service, she asked the complainant to show his identity card for the purpose of identity verification. After entering the complainant's data in the computer system, the bank employee was made familiar with certain restrictions to which she responded with the words "You cannot transfer money because you come from such a country, you know from which country you come from, are you a member of a political party in your country, etc." The bank subsequently justified the refusal based on anti-money laundering and anti-terrorist financing regulations. The Advocate considered that the complainant did not provide all available evidence to support his claims, although he stated that he had particular evidence at his disposal. He also failed to respond to the Advocate's letter with all the findings for information and clarification. In view of the above, the Advocate did not confirm the occurrence any discriminatory conduct. The decision has become final. (Decision No. 0700-48/2019/7 of 12 February 2021)

1.2.3 Assessments of discriminativeness of regulations with regard to the personal ground of nationality

The restrictions of exit from the country with the purpose of the epidemic containment were according to the Advocate, discriminatory

The Advocate received two complaints in connection to an Ordinance by which the Government of the Republic of Slovenia prevented the citizens of Slovenia from travelling to the countries on the red list due to the poor epidemiological situation during the Covid-19 epidemic. The prohibition did not apply to recovered and vaccinated persons and to a few specific exceptions. The first complainant stated that the Government of the Republic of Slovenia discriminates against him on the basis of his health status, as he had not recovered from the covid-19 virus because he had followed the precautions and thus had not contracted the virus while he was also not able to get vaccinated at that time. This prevented him from accessing his own real estate property in the Republic of Croatia. The other complainant mentioned in the complaint a statement made by the Minister of the Interior that such measure is necessary due to the danger connected to potential travel of citizens to countries of the former Yugoslavia during Easter holidays. The second complainant considered that these were obvious measures to create inequality and called on the Advocate to take action.

The prohibition on exit from the country was set out in the Ordinance determining the conditions of entry into the Republic of Slovenia to contain and control the covid-19 infectious disease (Official Gazette of the Republic of Slovenia, No. 46/2021). The Ordinance has been in force since the 29 March 2021 until 11 April 2021. The Advocate assessed that according to the conducted three-step proportionality test, the prohibition of exit from the country or travelling to countries on the red list, as provided for in the first paragraph of Article 11 of the Ordinance, followed the legitimate goal of preventing the spread of infections, while however the means of achieving such goal were only partially adequate, and in particular they were not (absolutely) necessary and proportionate in the narrow sense, to prevent the uncontrolled spread of covid-19 and avoid the breakdown of the health system.

Since the measures didn't fulfil the criteria to be acknowledged as an exception to the prohibition of discrimination, the Advocate considered the first paragraph of Article 11 of the Ordinance to be discriminatory. It was discriminatory against all persons who had not yet recovered from covid-19 or had not yet been vaccinated against the infectious disease (i.e. due to their health status – the lack of antibodies against the SARS-CoV-2 virus) and at the same time did not fall under any of the specific exceptions (referred to in the first paragraph of Article 10 of the Ordinance). It was also discriminatory against all individuals coming from the countries of the former Yugoslavia (i.e. from the perspective of their personal grounds of nationality and citizenship) who did not qualify as any of the exceptions to the prohibition on leaving the country. In the present case, the Article 11 of the Ordinance, excessively restricted the freedom of movement of persons, as it (according to the purpose or objective of the measure presented) disproportionately interfered with the right to enjoy privacy in connection with private property in another country and with the right to private and family life of persons exercising this right in another country than their country of residence.



Given that the Ordinance under consideration was no longer in force at the time of the assessment procedure before the Advocate, and since the alleged unconstitutionality of Article 11 of the present Ordinance is already being considered by the Constitutional Court, the Advocate did not submit a request for constitutional review of the regulation before the Constitutional Court of the Republic of Slovenia under Article 38 of the PADA. Hence, the discrimination assessment procedure was completed. (050-16/2021/4 and 050-18/2021/10)

1.2.4 The Advocate's recommendations regarding the personal ground of nationality

Recommendation aimed at the Draft Act Amending the Parental Protection and Family Benefits Act

The Advocate recommended that the MLFSAEO, in cooperation with other stakeholders and involving the Roma community, should analyse the diversity of causes for unjustified absences of Roma pupils, early school leaving and failure to participate in secondary education programmes as well as identify which of the programmes implemented were successful in achieving the set goals. It was further recommended that a careful assessment be carried out of the urgency and appropriateness of the special measures and a plan of targeted measures be prepared to encourage Roma children to attain primary and higher levels of education. (0070-13/2021/1)

Recommendation status: ● The legislative process is still ongoing.

Recommendation aimed at the Draft Act Amending the Social Assistance Payments Act

The Advocate recommended that the MLFSAEO should carry out a comprehensive equality impact assessment of the levels of minimum income, which sets out different age conditions according to the gender of the beneficiaries; in the process of planning measures targeted in particular at members of the Roma community (to whom financial aid would be paid in kind in specific cases) and in the introduction of a culpable ground for ineligibility for financial aid due to a final probation prison sentence imposed for an intentional criminal offence. (0070-12/2021/1)

Recommendation status: ● The legislative process is still ongoing.

Recommendation aimed at the Draft National Action Plan for the Roma 2021–2030

It was recommended that the Government Office for Nationalities should, among other things, upgrade the document as to comply with the guidelines set out in the “EU Roma Strategic Framework on Equality, Integration and Participation”; that the measures be targeted at all members of the Roma community living in Slovenia, including the Sinti; that the measures entail defined ways of integration and cooperation with the Roma community and civil society organisations; and that measures be added to eliminate the consequences of the Covid-19 epidemic in the Roma population. (0709-28/2021/2)

Recommendation status: ● Partially taken into account with the response of the Government Office for Nationalities.

Recommendation aimed at the Draft Personal Data Protection Act

The Advocate recommended that the MoJ should clarify in the justification of the provision, which exceptionally allows the collection of personal data on national and/or ethnic origin, that the collection of such data is also admissible in the context of the so-called special measures to ensure equality and actions with regard to discrimination investigation and elimination. Finally, the Advocate recommended that an additional provision be included in the Draft Act to regulate the protection of personal data in the context of the use of new technologies based on artificial intelligence from the perspective of fundamental rights protection and, in particular, prohibition of discrimination. (0070-1/2019/5)

Recommendation status: ● Taken into account by supplementing the Draft Act.

1.2.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of nationality

Workshop for women with migrant experience

Upon invitation by the Association Odnos, two representatives of the Advocate attended a two-hour online meeting held on 13 April 2021. They presented a group of 15 immigrant women from Turkish and Albanian-speaking communities with the Advocate's competences and ways in which the Advocate can help them in situation where, according to their opinion, they are subject to discrimination. Moreover, the advisory function of the Advocate was introduced together with specific examples of discrimination investigation in relation to race and religion. The participants highlighted increased hostility towards Muslim women wearing hijab in public and the continuing difficulties in opening bank accounts.

Conference on intercultural coexistence in kindergartens, schools and local settings

On 10 June 2021, a consortium of project partners headed by the Institute for Psychological Counselling and Educational Development Projects (ISA) organised a conference entitled "For intercultural coexistence in kindergartens, schools and local settings" as a final event of the project "Challenges of intercultural coexistence", aimed at improving the integration of immigrant children from other linguistic and cultural backgrounds in the Slovenian educational system. A representative of the Advocate presented the work of the equality body, its competences and methods of work explaining how anti-discrimination law tackles the issue of racism, particularly in the international context. Additionally, some prominent cases where the Advocate found discrimination based on the personal ground of nationality, race or ethnic origin were presented.



Roma Holocaust Memorial Day

The Head of the Advocate, Miha Lobnik, was the keynote speaker at the event on the occasion of the Roma Holocaust Memorial Day which took place in Murska Sobota on 6 August 2021. In his address, he underlined the importance of preserving the memory of the past events: "During the Third Reich, half a million Roma and Sinti lost their lives besides many others. The goal of these inconceivable acts of hostility was the definitive erasure of the Roma and Sinti and many others. In the remembrance of Pharimos, we must therefore again and again emphasise that these acts were cruelly inhumane and that every effort should be made to prevent such things from happening again in the future." He emphasised that, the Pharimos, which is the Roma name for the Nazi genocide against the Roma population, needs to be addressed as a severe human tragedy and that this belief must be one of the foundations on which a harmonious society of security and equality for all will be built.

Presentation of the results of the project Discrimination Based on Nationality, Citizenship, Skin Colour and Religion

On 26 October 2021, a representative of the Advocate attended the presentation of the results of the project Discrimination Based on Nationality, Citizenship, Skin Colour and Religion organised by the Peace Institute. It was found that discrimination is still present in Slovenia, most commonly in employment and workplace, health care, access to services, the housing market and in administrative procedures. It is most commonly experienced by foreigners and the Roma community. 84 percent of respondents believe that they have already been subject to discrimination on the basis of at least one of these personal grounds.

Workshop for women with migrant experience

At the invitation of the association Odnos, two representatives of the Advocate held an on-line presentation on 18 November 2021 where the Advocate's competences were presented together with a practical introduction of cases of discrimination addressed. A group of ten migrant women from Kosovo, Iraq, Palestine, Russia, Syria and Turkey had the opportunity to become familiar with the tasks of the Advocate and the ways in which the Advocate can help in cases of perceived discrimination. At the same time, the advisory function of the Advocate was introduced together with specific examples of discrimination investigation in relation to the personal grounds of race and religion. The participants highlighted some issues perceived, such as providing a special diet in kindergartens that would be adapted to religious beliefs, intolerant behaviour of civil servants, harassment and refusal to employ a candidate for wearing a hijab.

1.2.6 The Advocate's cooperation with civil society with regard to the personal ground of nationality

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.

THE ADVOCATE HIGHLIGHTS

Article 64 of the Constitution of the Republic of Slovenia (Special Rights of the Autochthonous Italian and Hungarian National Communities in Slovenia)

The autochthonous Italian and Hungarian national communities and their members shall be guaranteed the right to use their national symbols freely and, in order to preserve their national identity, the right to establish organisations and develop economic, cultural, scientific, and research activities, as well as activities in the field of public media and publishing. In accordance with laws, these two national communities and their members have the right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling. The geographic areas in which bilingual schools are compulsory shall be established by law. These national communities and their members shall be guaranteed the right to foster relations with their nations of origin and their respective countries. The state shall provide material and moral support for the exercise of these rights.

In order to exercise their rights, the members of these communities shall establish their own self-governing communities in the geographic areas where they live. On the proposal of these self-governing national communities, the state may authorise them to perform certain functions under national jurisdiction, and shall provide funds for the performing of such functions.

The two national communities shall be directly represented in representative bodies of local self-government and in the National Assembly.

The position of the Italian and Hungarian national communities and the manner in which their rights are exercised in the geographic areas where they live, the obligations of the self-governing local communities for the exercise of these rights, and those rights which the members of these national communities exercise also outside these areas, shall all be regulated by law. The rights of both national communities and their members shall be guaranteed irrespective of the number of members of these communities.

Laws, regulations, and other general acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities.

1.3 Race or ethnic origin

THE ADVOCATE HIGHLIGHTS

Article 65 of the Constitution of the Republic of Slovenia
(Status and Special Rights of the Roma Community in Slovenia)

The status and special rights of the Roma community living in Slovenia shall be regulated by law.

1.3.1 Advisory, informing and support activities related to the personal ground of race or ethnic origin

Mere perception that a job candidate has been discriminated against is not enough to establish discrimination

The Advocate was approached by an unsuccessful candidate for a position who stated in his letter that he had the sense that he had not been selected because of his name and surname and because he had a slightly darker complexion. The Advocate identified race and ethnic origin as relevant personal grounds, and if the client does not have Slovenian citizenship, citizenship can also be a relevant personal ground in the case. The Advocate explained to the client that the question of whether discrimination occurred in the specific case can be answered only after the conclusion of the investigation procedure, hence, the client was encouraged to file a complaint. The client was presented with the reversed burden of proof, and taking into account the formulation of the letter, informed that a mere feeling that the persona has been discriminated against suffices neither for administrative nor judicial proceedings. The burden of allegation obliges the client to make clear, specific and complete assertions about the facts that represent the basis for their allegations. Only then does the burden of proof shift to the alleged violator, who must prove the absence of discrimination. The client chose not to submit a complaint, hence the advisory procedure was completed. **(0702-103/2021)**

Possible discrimination in a store due to the personal ground of race or ethnicity

The Advocate was approached by a client of Roma origin who alleged discrimination in a store. The shop assistant asked the client to show the contents of her backpack. Moreover, the client's request to see the book of complaints was denied. The Advocate called on the client to describe the events in a precise and specific manner, and for the purpose of establishing discrimination, she must submit a handwritten complaint and provide the contact details of potential witnesses for the purpose of conducting the evidentiary procedure. The client did not respond to the Advocate's invitation. The advisory procedure has thus been completed. **(0702-278/2021)**

The content of the “School for All” campaign posters does not contain elements of discrimination, but potentially encourages prejudice and stereotypes

Regarding the graphic design of the School for All campaign, the Advocate was contacted by both the advertiser and the association which considered the posters to be discriminatory, while both called on the Advocate to establish whether the campaign was a matter of discrimination. The poster contained the image of two boys, an Eurasian boy with a gesture, which is often used as a discriminatory against Asian people, imitating the other, Asian boy on the poster. The Association found the poster to be offensive and discriminatory, while the advertiser pointed to the message of the campaign “All Equal, All Equitable”. The Advocate pointed out that, in the light of the visual image of the controversial poster, the case could be assessed in terms of potential harassment referred to in the first paragraph of Article 8 of the PADA or in terms of possible incitement to discrimination referred to in the first paragraph of Article 10 of the PADA, however it is not yet clear whether the content of the poster would contain all the elements of the stated forms of discrimination. The Advocate prepared a clarification pointing out that while the advertisement carries a profound message in terms of accepting diversity, it could be understood in multiple ways and therefore it could be potentially problematic especially from a socio-cultural perspective, and as a result, it could potentially encourage prejudice and stereotypes. None of the parties decided to submit a complaint, therefore the advisory procedure was completed. (0702-159/2021, 0702-164/2021)

Allegedly controversial treatment of a client of Roma origin at a police station

The Advocate was approached by a client of Roma origin who stated that he was subject to controversial treatment by an employee of the Specialized State Prosecutor’s Office which he perceived as discriminatory. In its response the Advocate explained the shift of the burden of proof referred to in Article 40 of the PADA. The Advocate turned to the competent police station for clarification, where the hearing by the specialised state prosecutor’s office was held, which however denied the allegations. The Advocate handed over the clarifications by the Police to the client and explained that a sense of discrimination does not relieve the client from the burden of allegation, and in order to establish discrimination, the Advocate needs appropriate evidence, such as at least the indication of the contact details of witnesses, which the client did not provide. In the process of discrimination investigation, the Advocate must establish with certainty, in accordance with the rules of the general administrative procedure, the facts on the basis of which the existence of discrimination is established. The client chose not to submit a complaint, hence the advisory procedure was completed. (0702-232/2021)



1.3.2 Discrimination investigation in relation to the personal ground of race or ethnic origin

A media release by a publishing company violated the prohibition of discrimination

The Advocate was approached by a client in connection with the media publication of an article in the weekly magazine *Demokracija* who alleged discrimination on the grounds of race and religion. The Advocate assessed that the case was relevant in terms of protection against discrimination in relation to race or ethnic origin and religion or belief, which are legally protected personal grounds under Article 1 of the PADA, and therefore, in accordance with Article 34 of the PADA, a procedure of discrimination investigation was initiated ex officio. In the proceedings, the Advocate conducted an analysis of the text and found that the author of the text justified ideas about the dominance and superiority of people in terms of skin color, ethnic origin and religious belief. In doing so, he violated the second paragraph of Article 10 of the PADA. The Advocate also assessed the text from the perspective of freedom of speech and concluded that the text represents an abuse of this fundamental right under the ECHR. The content of the text denies the essence of the concepts of equality and equal dignity of all people which are the fundamentals of the Convention. The editor-in-chief of the newspaper referred to the fact that the publication is a commentary and a satire. The Advocate concluded that the publication is discriminatory while justifying the domination and superiority of one group of persons compared to other groups of persons, irrespective of the genre in which it was supposedly written. Since the violator claimed that the article is a commentary or satire, which is why the publication is not discriminatory, the Advocate expressed a view also regarding the violator's defence. By involving an independent expert in the field of media, it was found that the publication was neither a commentary nor a satire, as it does not have the genre characteristics of these established forms of press communication. The decision has become final. (Decision No. **0700-52/2020/11** of 20 September 2021)

TV3 television violated the prohibition of discrimination by broadcasting the show Faktor on 21 January 2021

In February 2021, the Advocate of the Principle of Equality received a complaint due to allegedly inappropriate statements by the host of the TV3 show *Faktor*, which was aired on 21 January 2021. The presenter, via her statements, classified people on the basis of the personal ground of race and gave a clear message about the inferiority of people of a particular race. The Advocate first addressed the statement of the presenter in terms of freedom of expression under Article 39 of the Constitution of the Republic of Slovenia and Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). These provisions also protect the providing of information and ideas that may be shocking, insulting, disrupting to the state or any part of the population. However, the Advocate assessed that the presenter's statement does not enjoy protection under the ECHR. Namely, her statement seriously interferes with the fundamental rights of certain persons, namely the right to personal dignity and security, the right to inviolability of physical and mental integrity, and the right to protection against incitement to inequality and intolerance, as provided for in Article 63 of the Constitution of the Republic of Slovenia.

For this reason, the Advocate therefore concluded in the proceedings that the content of the submission contains a prohibited public justification of abuse and contempt for persons due particular personal grounds, as well as a prohibited justification of ideas about the dominance or superiority of a person or group of persons with certain characteristics over those who are not members of that group. By broadcasting this programme, TV3 has therefore violated Article 10 of the Protection against Discrimination Act. The decision has become final. (Decision No. 0700-15/2021/7 of 16 July 2021)

No discrimination was found during a police intervention in a Roma settlement

The Advocate received five complaints by residents of Roma settlements due to an intervention by the Police. The complaint referred to an intervention which took place on 3 April 2020 around 11 pm, during the lockdown caused by the covid-19 epidemic, when the police officers from the Novo mesto Police Department allegedly intervened unjustifiably, shouting loudly, waking up several underage children and making fun of the rest of the Roma, provoking them, throwing one of the violators' identity cards on the floor after the procedure was completed. Police officers allegedly misbehaved with all the Roma and imposed a fine on one of them unjustifiably. According to the complainant and other residents of the settlement, the police intervention was unnecessary as they did not play loud music. Their intervention caused great fear with the residents, especially children, which is why they accuse the police of unequal treatment or discrimination. In the course of the proceedings, the Advocate concluded that as regards the intervention in the Roma settlement, the collected facts and evidence do not clearly indicate the foundational element of discrimination, i.e. the causal link between the personal grounds that were allegedly the reason for the intervention and other police procedure conducted. The mere fact that the complainant and other inhabitants of the Roma settlement were of Roma nationality was not the reason why the police carried out the intervention, but the reason were the violations against public order. Various alleged irregularities in the conduct of police officers during the interventions in the settlement, such as shouting, showing weapons, throwing documents on the ground, were mentioned in the complaint, however the latter could not be established with certainty during the investigation procedure. Consequently, the Advocate could not confirm the occurrence of discrimination. The Advocate also informed the complainants on complaint procedures against police conduct which are intended to deal with misuse of powers. The decisions have become final. (Decisions No. 0700-33/2020/24, 0700-33/2020/25, 0700-33/2020/26, 0700-33/2020/27, 0700-33/2020/28 of 30 June 2021)

1.3.3 Assessments of discriminativeness of regulations with regard to the personal ground of race or ethnic origin

In 2021, the Advocate did not conduct assessments of discriminativeness of regulations with regard to the personal grounds of race or ethnic origin.

1.3.4 The Advocate's recommendations regarding the personal grounds of race or ethnic origin

Recommendation aimed at the Draft Act Amending the Parental Protection and Family Benefits Act

The Advocate recommended that the MLFSAEO, in cooperation with other stakeholders and involving the Roma community, should analyse the diversity of causes for unjustified absences of Roma pupils, early school leaving and failure to participate in secondary education programmes as well as identify which of the programmes implemented were successful in achieving the set goals. It was further recommended that the Ministry should carry out a careful assessment of the urgency and appropriateness of the special measures and prepare a plan of targeted measures to encourage Roma children to attain primary and higher levels of education. (0070-13/2021/1)

Recommendation status: ● The legislative process is still ongoing.

Recommendation aimed at the Draft Act Amending the Social Assistance Payments Act

The Advocate recommended that the MLFSAEO should carry out a comprehensive equality impact assessment of the levels of minimum income, which sets out different age conditions according to the gender of the beneficiaries; in the process of planning measures targeted in particular at members of the Roma community (to whom financial aid would be paid in kind in specific cases) and in the introduction of a culpable ground for ineligibility for financial aid due to a final probation prison sentence imposed for an intentional criminal offence. (0070-12/2021/1)

Recommendation status: ● The legislative process is still ongoing.


Recommendation aimed at the Draft Personal Data Protection Act

The Advocate recommended that the MoJ should clarify in the justification of the provision, which exceptionally allows the collection of personal data on national and/or ethnic origin, that the collection of such data is also admissible in the framework of the so-called special measures to ensure equality and actions with regard to discrimination investigation and elimination. The Advocate also recommended that an additional provision be included in the Draft Act to regulate the protection of personal data in the context of the use of new technologies based on artificial intelligence from the perspective of fundamental rights protection and, in particular, prohibition of discrimination. (0070-1/2019/5)

Recommendation status: ● Taken into account by supplementing the Draft Act.

Recommendation aimed at the Draft National Action Plan for the Roma 2021–2030

It was recommended that the Government Office for Nationalities should, among other things, upgrade the document as to comply with the guidelines set out in the “EU Roma Strategic Framework on Equality, Integration and Participation”; that the measures be targeted at all members of the Roma community living in Slovenia, including the Sinti; that the measures entail defined ways of integration and cooperation with the Roma community and civil society organisations; and that measures be added to eliminate the consequences of the covid-19 epidemic in the Roma population. (0709-28/2021/2)

Recommendation status:  Partially taken into account with the response of the Government Office for Nationalities.

1.3.5 The Advocate’s educational and awareness-raising activities with regard to the personal grounds of race or ethnic origin

Roma Holocaust Memorial Day

The Head of the Advocate, Miha Lobnik, was the keynote speaker at the event on the occasion of the Roma Holocaust Memorial Day which took place in Murska Sobota on 6 August 2021. In his address, he underlined the importance of preserving the memory of the past events: “During the Third Reich, half a million Roma and Sinti lost their lives besides many others. The goal of these inconceivable acts of hostility was the definitive erasure of the Roma and Sinti and many others. In the remembrance of Pharimos, we must therefore again and again emphasise that these acts were cruelly inhumane and that every effort should be made to prevent such things from happening again in the future.” He emphasised that, the Pharimos, which is the Roma name for the Nazi genocide against the Roma population, needs to be addressed as a severe human tragedy and that this belief must be one of the foundations on which a harmonious society of security and equality for all will be built.

1.3.6 The Advocate’s cooperation with civil society with regard to the personal grounds of race or ethnic origin

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.



1.4 Language

1.4.1 Advisory, informing and support activities related to the personal ground of language

The possibility of using an interpreter in access to healthcare for persons who do not speak Slovenian is not discriminatory towards persons who speak the Slovenian language

The Advocate received a letter from the mother of a premature baby alleging unequal treatment when visiting health-care facilities. The facilities explained to the parents that only one parent, either the mother or the father, can come to check-ups with the child. Such a measure was necessary in order to contain the spread of the covid-19 epidemic. The exception were parents of children who do not speak Slovenian, as they can be accompanied by a person who speaks the Slovenian language. The Advocate explained to the client that in this case the contested measure is intended to prevent discrimination due to language as a personal ground. It was pointed out that the institute of appropriate accommodation does not interfere with the rights of others and does not raise the issue of discrimination against individuals who did not need such adjustment. The advisory procedure has thus been completed. (0702-31/2021)

1.4.2 Discrimination investigation in relation to the personal ground of language

In 2021, the Advocate did not issue any decision dealing with discrimination investigation in relation to the personal ground of language.

1.4.3 Assessments of discriminativeness of regulations with regard to the personal ground of language

In 2021, the Advocate did not conduct assessments of discriminativeness of regulations with regard to the personal ground of language.

1.4.4 The Advocate's recommendations regarding the personal ground of language

Recommendation aimed at the Draft Act Amending the Labour Market Regulation Act

The Advocate recommended that in the Draft Act, the MLFSAEO should explain the purposes and objectives of the proposed amendments to the legal provisions regarding the redefinition of suitable employment, extension of the public works period and changes regarding the handling of appeals against the decisions of the Employment Service, and support them with data and explain how the Ministry ensures the proportionality of the proposed measures. It was further recommended that the Draft Act be supplemented as to abolish the provision of the current act, which stipulates the condition of the knowledge of the Slovenian language for foreigners, as it distinguishes between registered unemployed persons on the basis of (a personal ground of) citizenship, and indirectly on the basis of other personal grounds.

(0709-29/2021/1)

Recommendation status: ● The legislative process is still ongoing.

1.4.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of language

In 2021, the Advocate placed a particular emphasis on bringing to light the situation of individual vulnerable groups during the covid-19 spread with the help of the media and publications on social networks. In various ways, the Advocate justified the necessity of adapting the anti-covid measures to the principle that no one should be left behind by the society.

1.4.6 The Advocate's cooperation with civil society with regard to the personal ground of language

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.



1.5 Religion or belief

THE ADVOCATE HIGHLIGHTS

Article 41 of the Constitution of the Republic of Slovenia
(Freedom of Conscience)

Religious and other beliefs may be freely professed in private and public life.

No one shall be obliged to declare his religious or other beliefs.

Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs.

The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions.

1.5.1 Advisory, informing and support activities related to the personal grounds of religion or belief

The decision to (not) get vaccinated cannot be compared with the decision to choose religion

The Advocate received a general question as to whether the choice of religion is a personal choice and whether discrimination based on religion is permissible in different areas of life, including access to goods and services. The client compared the decision on religion with the decision on vaccination, since both are a matter of the individual's free choice. The Advocate explained that religion can be an inborn or acquired personal ground that cannot be changed and it is not permissible to ask an individual to change it, as it is closely linked to the individual's identity. It is, among others, a particularly protected personal ground, which stems from the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the EU Charter of Fundamental Rights. It is also enshrined in Article 14 of the Constitution of the Republic of Slovenia. The Advocate also expressed its position regarding the term belief, relying on the decision of the Supreme Court No. I Up 27/2008 of 23 June 2008. The Court took the position that only one of the meanings of the term "belief" according to the Dictionary of the Slovenian Standard Language is protected within the framework of anti-discrimination legislation, and not belief as a judgement of an individual or the conviction about a certain fact. The mere fact that an individual does not want to get vaccinated cannot be considered a belief unless there is a personal ground in the background. The Advocate explained to the client that, as a result, the affiliation to a particular religion could not be compared with the decision to (not) get vaccinated. The advisory procedure has thus been completed. (0702-185/2021)

Opposition to covid-19 vaccination for religious reasons

The Advocate received a mail from a client who was concerned about the conditioning of access to various rights and benefits on the vaccination against covid-19. The client stated that she opposes vaccination on religious grounds. The Advocate sent a clarification to the client stating that the DCP condition (recovered, vaccinated, tested), intended to contain the covid-19 epidemic, covers the vast majority of the population, as access to services and goods is provided to both vaccinated and recovered persons and others under the condition of a negative test. The Advocate invited the client to submit a complaint if she wanted to initiate a discrimination investigation procedure, explaining in more detail their religious belief and providing evidence that the religion practiced by the client prohibits vaccination or testing. The client did not choose to initiate the proceedings. The advisory procedure has thus been completed. (0702-86/2021)

The DCP condition does not constitute discrimination on grounds of religion or belief

The Advocate received a letter from an individual stating that the DCP condition (recovered, vaccinated, tested) constitutes discrimination based on the personal ground of “belief” in terms of “religion or belief”, due to which the individual does not want to get vaccinated. The Advocate explained to the client that the definition of the term “belief” is primarily based on the decision of the Supreme Court of the Republic of Slovenia No. I Up 27/2008 of 23 June 2008. The Court took the position that only one of the meanings of the term “belief” according to the Dictionary of the Slovenian Standard Language is protected within the framework of anti-discrimination legislation, and not belief as a judgement of an individual or the conviction about a certain fact. The mere fact that an individual does not want to get vaccinated cannot be considered a belief unless there is a personal ground in the background of such decision. Anti-discrimination legislation intended for the protection against discrimination was developed to provide protection to protected groups who have in common a clear and irrefutable personal ground. Non-vaccination in itself does not represent such a personal ground. Each individual decides to get vaccinated or not. The decision not to get vaccinated also brings with it all the related consequences, which in this case include the obligation to get tested in line with the DCP condition. The advisory procedure has thus been completed. (0702-208/2021)

The statement “atheists do not tolerate Christians” does not contain elements of discrimination

The Advocate was approached by a client that opposed the controversial writing of a mayor in the municipal newsletter. He expressed the view that members of other religions, especially atheists, are not desirable in the municipality, as they “do not tolerate Christians”. The client considered it to be hate speech. The Advocate explained that in the present case, harassment under Article 8 of the PADA or incitement to discrimination under Article 10 of the PADA could be discussed if the necessary elements from the definitions of either of the two forms of discrimination were given. Following a preliminary assessment, these elements could not be found in the case. The advisory procedure has thus been completed. (0702-20/2021)



Harassment and incitement to discrimination on social networks

The Advocate received an anonymous complaint based on the personal ground of belief, in which the client accuses a prominent public figure of harassment and of incitement to discriminate. It was a "story" on Instagram in which the alleged offender insulted the so-called "Friday protesters". The Advocate invited the client to amend the complaint, however no reply was received. The advisory procedure has thus been completed. (0702-223/2021)

Reporting a controversial article at the Culture and Media Inspectorate

The Advocate was approached by a religious community in connection to particular controversial statements from an article published on a media portal. The text implies that the author directly associates rape with refugees, especially if they are members of the Muslim religion. The Advocate identified possible elements of harassment, as set out in the PADA, in the text. Since the client stated that they had already reported the situation to the Culture and Media Inspectorate with the Ministry of Culture of the Republic of Slovenia, the Advocate asked that the information on the outcome of the procedure be forwarded to the equality body. The Advocate also informed the client about the possibility to initiate a discrimination investigation procedure under the PADA. The advisory procedure has thus been completed. (0705-39/2019)

Critical approach towards Muslims does not imply public justification of abuse or contempt for persons or groups of persons due to particular personal grounds

The Advocate was approached by a client of Islam religion with refugee status. She drew attention to particular controversial activities of a person working in an association dealing primarily with refugees. The alleged violator allegedly failed to adequately inform competent institutions on violations committed against refugees, and at the same time made negative comments about Muslims in the media. After careful examination, the Advocate concluded that the conduct contained no elements of discrimination, which must be given if discrimination is to be found. It was further noted, that such a decision does not mean that the publicly stated views are appropriate, it only means that they do not constitute discrimination under the PADA. The advisory procedure has thus been completed. (0702-154/2020)

1.5.2 Discrimination investigation in relation to the personal ground of religion or belief

Following an intervention by the Advocate, a kindergarten provides a child with a diet in accordance with their religion

The Advocate received a complaint from a father whose child avoids a certain type of meat for religious reasons. The child attended a kindergarten, where the diet was not adjusted and no substitute food was offered. The kindergarten referred to the guidelines of a healthy diet stating that the obligation to adjust the menu only applies in case of health reasons on the child's side. In the subject case, the Advocate found possible indirect discrimination against the child on the grounds of religion or belief. The procedure ended with a decision on termination of the procedure, as the father reached an agreement with the kindergarten. The decision has become final. (Decision No. [0700-24/2021/6](#) of 22 April 2021)

1.5.3 Assessments of discriminativeness of regulations with regard to the personal ground of religion or belief

In 2021, the Advocate did not conduct assessments of discriminativeness of regulations with regard to the personal ground of religion or belief.

1.5.4 The Advocate's recommendations regarding the personal ground of religion or belief

In 2021, the Advocate did not issue any recommendations regarding the personal grounds of religion or belief.

1.5.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of religion or belief

In 2021, the Advocate placed a particular emphasis on bringing to light the situation of individual vulnerable groups during the covid-19 spread with the help of the media and publications on social networks. In various ways, the Advocate justified the necessity of adapting the anti-corona measures to the principle that no one should be left behind.



THE ADVOCATE HIGHLIGHTS

Article 7 of the Constitution of the Republic of Slovenia

The state and religious communities shall be separate.

Religious communities shall enjoy equal rights; they shall pursue their activities freely.

1.5.6 The Advocate's cooperation with civil society with regard to the personal grounds of religion or belief

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.

In the context of the personal ground of religion, information from written queries was collected on recorded damage to churches and other religious buildings and other forms of intolerance as well as perceived experiences of members of registered churches and religious communities.

1.6 Disability

THE ADVOCATE HIGHLIGHTS

Article 52 of the Constitution of the Republic of Slovenia
(Rights of Disabled Persons)

Disabled persons shall be guaranteed protection and work-training in accordance with the law.

Physically or mentally handicapped children and other severely disabled persons have the right to education and training for an active life in society.

The education and training referred to in the preceding paragraph shall be financed from public funds.

1.6.1 Advisory, informing and support activities related to the personal ground of disability

Employees who are parents of children with special needs have the right to reasonable accommodation

On behalf of an employee who is the mother of a child with special needs, the President of the trade union of the company where the employee was employed approached the Advocate. In the department where she was working, she and her colleagues formed an agreement that allowed working hours to be adapted to her family situation. The management assigned her to another department, where any arrangements and adjustments were prohibited. The Advocate emphasised the personal grounds of maternity and parenting in relation to the right to reasonable accommodation and the personal ground of disability in relation to so-called discrimination by association. The Advocate explained to the client that employees who are parents of children with special needs have the right to reasonable accommodation under the Convention on the Rights of Persons with Disabilities and that the case under consideration could represent a discriminatory conduct. The Advocate encouraged the President of the trade union to submit a complaint or encourage the employee to submit the complaint herself. The employee filed the complaint, hence the case was continued in the form of discrimination investigation procedure under the PADA. Eventually, a settlement was reached between the employee and the employer on a more favourable allocation of working hours. The advisory procedure has thus been completed. (0702-110/2021)

Refusal to pay contributions to self-employed individuals with disabilities by the Health Insurance Institute for the period of justified absence from work

The Advocate was approached by a self-employed person with disabilities, who considers the practice of the Health Insurance Institute (HII) regarding the payment pension and disability insurance contributions as discriminatory. The self-employed person was granted an exemption from the payment of contributions due to disability. Since he was absent from work for more than 30 days, the payment of the sick leave compensation was transferred to the Health Insurance Institute, and the latter did not consider HII to be exempt from the payment of contributions for the complainant. In order to verify the information and obtain as much relevant information as possible, the Advocate sent a query to the Health Insurance Institute (HII). It was found that the Vocational Rehabilitation and Employment of Persons with Disabilities Act provides for an exemption from the payment of contributions also for self-employed persons with disabilities, which is a financial incentive for the employment of persons with disabilities and can be perceived as a positive measure. However, the HII considers that the exemption applies only to the self-employed person and not to the HII. The Advocate submitted the clarifications to the complainant, who decided to submit a complaint, hence the topic will be addressed before the Advocate within an administrative investigation procedure. (0702-108/2021)

Parents or guardians of persons with special needs should request a refund of the cost of care from the training centre due to the withdrawal to home care

The father of a resident of a training, work and care centre approached the Advocate with regard to the reimbursement of care costs due to the withdrawal of persons from institutional care to home care during to the covid-19 epidemic. The case concerns a relevant topic, as it deals with a particularly vulnerable group of individuals, namely persons with special needs. However, the Advocate did not detect the issue of discrimination in terms of unfavourable treatment of one group of persons compared to another, but rather the problem of financing social rights in favour of parents of persons placed in institutions, which arose due to the transfer to home care during the measures for covid-19 containment. The Advocate presented to the client the relevant provisions of the so-called crisis legislation governing reimbursement of care costs and publicly available letters from the competent institutions. The client was advised on the method of legally envisaged action in such matters, namely to request the rest of the maintenance allowance from the training center institution and subsequently exercise legal remedies before the competent ministry. The advisory procedure has thus been completed. (0702-92/2021)

Representatives of all categories of disability who are represented by the association should be able to be candidates in elections for the management of the association

An individual wrote to the Advocate about the outdated rules of a disability association. The rules defined that each of the two major categories of disability have to be represented by 50:50 ratio of the delegates in the assembly of the association. This means that 50% of the members have to represent one category of disability and 50 % the other category. The client stated that these rules made sense in the past when the association got recognized only two categories of disability as worthy of representativeness.

However, due to the members needs the association later obtained a recognition of representativeness for two additional categories of disability. However, the latter are still not represented in the association's assembly and are not allowed to be candidates for the delegates at the assembly. The Advocate assessed that in the case it is possible to carry out an investigation procedure and invited the the client to submit a complaint and to make the facts more specific as well as provide additional data and information. The client did not respond to the Advocate's clarification. The advisory procedure has thus been completed. (0702-82/2021)

The Personal Assistance Act Amendment B may lead to termination of personal assistance providers

The Advocate was approached by an association that provides personal assistance services with regard to the new conditions for the implementation of personal assistance, as envisaged by Amendment B to the Personal Assistance Act. The latter significantly tightens the conditions, and companies that fail to meet them within the appropriate time limit are ex officio erased from the register of operators under the new regime. The Advocate explained that in principle this situation can not be considered discriminatory, however the issue of non-compliance with anti-discrimination law could be raised if the conditions led to a situation where personal assistance providers for persons with certain types or forms of disabilities would no longer perform personal assistance or would significantly deteriorate their services. The Advocate called on the client to inform it if the Amended Act indeed led to such consequences. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. (0702-261/2021)

Free long-distance transport for pensioners, persons with disabilities and unemployed war veterans is not discriminatory

The Advocate was approached by a client who is a partially retired disabled person of third category. The client stated that they wanted to obtain the same benefit of free long-distance transport that the fully retired people with disabilities and pensioners are entitled to. The Advocate noted that, in accordance with the Road Transport Act, free long-distance transport is granted to pensioners or persons over 65 years of age, holders of a disability benefit card and individuals with a war veteran status. However, it is granted to all the mentioned categories of persons provided that they are not employed or engaged in an independent registered activity. If the benefit was also granted to individuals in employment, they would no longer be entitled to the reimbursement of costs. The Advocate explained that these are not comparable groups of individuals (employed and unemployed persons with disabilities), so the subject case is not a question of discrimination under the PADA. A similar question was also submitted to the Advocate by one of the trade unions. The advisory proceedings were concluded. (0702-248/2021/2, 0702-262/2021)



Exemption from the annual tax on passenger cars

The Advocate received a letter from the complainant regarding the allegedly controversial and discriminatory arrangements for the application of the exemption from the payment of the annual tax on passenger cars, as regulated by the fifth paragraph of Article 9 of the Motor Vehicle Charges Act (MVCA). The complainant also sent the Advocate a negative decision of the administrative unit and the ministry (appellate authority) and the action in the administrative dispute filed in the case. The Advocate advised the complainant to draw attention in the administrative dispute to the purpose of the institute of exemption from the annual tax on vehicles, which is to ensure greater mobility of persons with disabilities. In this regard, the Advocate encouraged the client to demonstrate in the ongoing court proceedings the circumstances supporting the fact that the vehicle for which the exemption is claimed serves precisely the purpose of transporting the complainant's son with disabilities and that it is the only personal vehicle used for transporting the beneficiary under the said Act. The Advocate also advised the complainant to draw attention to the Advocate's recommendation (No. 070-87/2019/1 of 22 August 2019), in which the equality body, as part of its system function, has already taken a position on the criteria for eligibility for exemption from the annual motor vehicle tax, as regulated by the fifth paragraph of Article 9 of the MVCA. The advisory procedure has thus been completed. [\(0702-78/2021\)](#)

When carrying out construction works, contractors must ensure access for people with disabilities

The Advocate was contacted by a person with disabilities in connection with the execution of construction works in one of the Slovenian municipalities, where the contractor enabled access to the facility with service providers only by a way of staircase, thus completely excluding persons with disabilities from access. Based on the letter, the Advocate concluded that the client points to relevant issues that are problematic in terms of the principle of equality referred to in Article 14 of the Constitution of the Republic of Slovenia, the Convention on the Rights of Persons with Disabilities and Slovenian legislation. The Advocate encouraged the client to submit a complaint, which can also be done anonymously, and provide more information on the case. The client did not respond to the Advocate's letter. The advisory procedure has thus been completed. [\(0705-7/2021\)](#)

Lack of minimum standards for accessibility of Internet content and television programmes in techniques adapted to the sensory handicapped

Several clubs and associations approached the Advocate via a letter, alleging direct discrimination due to audism, when on the occasion of the Day of the Slovenian Sign Language RTV Slovenia broadcast an informative programme on the Slovenian Sign Language without sign language interpretation. The Advocate confirmed that the subject matter is an extremely important issue concerning persons with sensory impairments, and that this area is not optimally regulated in Slovenia. The Advocate explained that a discrimination investigation procedure on this subject has already been carried out, but due to the lack of directly applicable and specific legal bases discrimination in the specific case could not be established as there were no legal bases to support such a decision.

One of the elements of discrimination is namely the interference with a specifically protected benefit. For lack of legal regulation, the Advocate issued a Recommendation to the Government of the Republic of Slovenia in 2020 on the accessibility of TV content for persons with sensory impairments, and participated in the drafting of the Act Amending the Audio-visual Media Services Act. No response to the recommendation was received. The advisory procedures have been completed. (0702-286/2021, 0702-41/2021)

1.6.2 Discrimination investigation in relation to the personal ground of disability

Following an intervention by the Advocate, an employee who is a mother of a child with special needs obtained the right to a special allocation of working hours

The Advocate of the Principle of Equality was approached by an individual who is a mother of a child with special needs. In the department where she was working, she and her colleagues formed an agreement that allowed working hours to be adapted to her family situation. The management assigned her to another department, where any arrangements and adjustments were prohibited. The Advocate emphasised the personal grounds of maternity and parenting in relation to the right to reasonable accommodation and the personal ground of disability in relation to so-called discrimination by association. As a result, the Advocate addressed a call for an amicable solution to the employer. The complainant informed the Advocate that she had reached a settlement with the employer that was convenient for her and that she had already signed an annex to the employment contract. The Advocate was also informed about the successful settlement by the employer, who further explained that until receiving the Advocate's invitation, they were not aware of the situation of the employee. (Decision on the suspension of the proceeding No. **0700-43/2021/11** of 18 October 2021)

The Institute for Pupils with Hearing Impairments did not discriminate against pupils in classes

The Advocate conducted a discrimination investigation procedure involving pupils with hearing impairments at the elementary school operating within one of the institutions for people with hearing impairments. A report from a parent of one of the students was received due to the fact that teachers in the school keep wearing protective masks during the applicability of measures to contain the spread of the infectious disease covid-19. As a result, students have difficulty following the teaching process, as besides the sign language, lip reading is indispensable for their understanding of communication. During the procedure, it turned out that teachers in the school do not wear "ordinary" protective masks, but visors – as provided for by the exception in the special ordinance of the Government on protective measures during the epidemic/pandemic of covid-19. This arrangement represents a reasonable accommodation to effectively prevent indirect discrimination against pupils with hearing impairments. The misconception of the parent that these were ordinary masks was caused by a communication misunderstanding between the parent and the school management, which was also resolved with the help of the Advocate. The decision has become final. (Decision No. **0700-20/2021/11** of 17 May 2021)



Participation in the sports competition from parakarate is allowed to all competitors regardless of the type of disability

The Advocate received a complaint from a non-governmental organisation to address the alleged discrimination related to the rules for the parakarate competitions issued by the Karate Association of Slovenia (KAS) Judicial Commission in May 2020. The rules allowed the participation in the competitions to three categories of competitors: 1) in wheelchairs, 2) the blind and visually impaired, 3) those with intellectual disabilities. According to the complainant, the rules are discriminatory, as they do not include all persons with disabilities among the competitors, especially those with physical disability who do not use a wheelchair but other devices such as crutches and a rollators or do not need any of the aforementioned devices (persons with cerebral palsy, muscular dystrophy, genetic disorders, amputations, etc.). In accordance with the aforementioned rules, only certain persons with disabilities should be prevented from participating in competitions within the KAS. In the proceedings, the Advocate noted that despite the written rules issued by the Judicial Commission of the KAS in May 2020 as a translation of the rules by the World Karate Federation, which envisage three categories of competitors, national championships are held according to the respective rules of each national championship, and that so far all competitors have been able to enter the competition, regardless of the type of disability. Since the Advocate did not find any restrictions directed at individuals based on their disabilities in the organising of national championships in parakarate, discrimination was not found by means of the decision. The decision has become final. (Decision No. [0700-51/2020/18](#) of 15 November 2021)

The prohibition of the provision of physical assistance to a pupil during distance education is discriminatory

The Advocate found discrimination against a pupil who, due to her medical condition in connection with a disability, had to attend a part or all of her classes remotely. Due to the physical functional limitations, the institution providing her education and the Ministry of Education, Science and Sport have recognised her right to a companion for physical assistance in classes. However, the Ministry did not allow her to exercise this right at the time when she was doing school work from home due to the protection of her health. In an explanatory note to the Advocate, the Ministry stated that there was no legal basis for this. The Advocate found that the Ministry's reasoning was incorrect. The Placement of Children with Special Needs Act and the rules adopted on the basis of this Act do not stipulate that physical assistance in education may be provided to beneficiaries exclusively at the premises of the institution of their education. It is only stipulated that such assistance is provided during the schooling period. The Advocate thus established that due to her personal ground of disability and health status, which required distant schooling, the pupil was subject to unfavourable treatment compared to her classmates who were attending an educational institution and therefore continued to have access to physical assistance in classes. The pupil could not use the assistance during distance learning, although such assistance was recognised by the competent ministry as essential for the successful implementation of the educational process. The Advocate stated in the decision that this case represented a serious form of discrimination, as children were exposed to discriminatory treatment. It was stressed that the right to education was a fundamental right.

According to the Equalisation of Opportunities for Persons with Disabilities Act, persons with disabilities have the right to reasonable accommodations in integration in the schooling process and adjustments as per the schooling process. Moreover, the Advocate stressed that the State had a duty under international conventions on the rights of children and persons with disabilities to take active measures to neutralise obstacles that make it difficult for children with special needs to exercise their human rights and fundamental freedoms on equal basis. On 31 December 2021, the decision was still not final. (Decision No. [0700-28/2021/13](#) of 21 December 2021)

No discrimination was found in the accessibility of TV content for the sensory impaired people

The Advocate addressed alleged discrimination against persons with visual impairments in accessing television content. The complainant argued that persons with disabilities must be guaranteed the full accessibility of TV content broadcast by the RTV Slovenia and other broadcasters to the same extent as provided to persons without disabilities. In the process of discrimination investigation, the Advocate found that according to the current legislation, TV content intended for people with visual and hearing impairments adjusted using adapted techniques, is only required to be ensured by the RTV Slovenia. However, the legislation does not specify what proportion of the content is to be adjusted and what contents are to be adjusted in this way. Furthermore, the Advocate concluded that, despite the fundamental constitutional right to information, it cannot be considered that the Constitution imposes an obligation on all broadcasters to adjust all contents to the sensory impaired. According to the Equalisation of Opportunities for Persons with Disabilities Act, providers of goods and services must not be forced to carry a disproportionate burden in ensuring the accessibility of these goods and services to persons with disabilities. On the other hand, the regulations fail to lay down standards on the accessibility of content by commercial television broadcasters and cable operators. Hence, the Advocate concluded that discrimination cannot be found in this case. Nevertheless, a recommendation was addressed to the Government of the Republic of Slovenia regarding the accessibility of TV content to sensory impaired persons with the aim of establishing standard levels of accessibility to sensory impaired persons, which must be attained by commercial providers of television content. The complainant appealed against the Advocate's decision with the Administrative Court, where the proceedings are still pending. (Decision No. [0700-29/2019/49](#) of 24 February 2021)

1.6.3 Assessments of discriminativeness of regulations with regard to the personal ground of disability

According to the Advocate, the Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports is discriminatory towards deaf athletes

The Advocate assessed the discriminativeness of the Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports (ARSPWOAS). This Act regulates in more detail the conditions under which high-profile athletes can receive a special supplement to their pension. This way, athletes with a medal from the World Championships in the Olympic industry or discipline are entitled to a pension supplement. However, deaf athletes with comparable achievement do not have the same right. According to the Advocate, deaf high-profile athletes and hearing athletes are in a comparable situation, so they should also be entitled to equal rights. The Advocate noted that the regulation under ARSPWOAS constitutes direct discrimination of deaf athletes. Considering all the above and in light of the assessed discriminativeness of the regulation, the Advocate prepared a recommendation calling on the competent authorities to change the legislation accordingly or eliminate discrimination. The recommendation was taken into account by the adoption of a parliamentary Act to eliminate the discrimination. The discriminatory assessment procedure has thus been completed. (050-25/2021/1)

According to the Advocate, the arrangements regarding personal income tax payment in the case of a person working 50% and being entitled to disability allowance for the other 50% are not discriminatory

The Advocate received a request for the assessment of discrimination of a provision of the Personal Income Tax Act. It was submitted by a client, who is employed for 50% of the time and entitled to disability allowance for the other 50%. The client argued that due to his disability, he is in a disadvantaged position compared to comparable income recipients, as at the end of the income tax year he paid higher income tax. He compared his position with those who work full-time. During the assessment procedure, the Advocate found that the amount of the personal income tax surcharge is not relevant for the purpose of comparison, the relevant fact is namely the personal income tax payable for the tax year. The difference with the client occurs while he receives income from two sources and the employer levies the advance payment of personal income tax from the salary monthly, as if it were the only source of income, as during the year, it is not known what the total income and the final taxation basis and the related personal income tax rate will be. The tax authority takes into account all revenues in the subject year and levies personal income tax on the basis of this. Since the client's personal income tax advance does not correspond to the actual personal income tax charged, the rest must still be paid, while the full-time employee's only income is his salary and the tax advance is paid regularly which leads to a lower net salary during the year, hence he does not have to pay the rest at the end of the year. The Advocate assessed that the client was treated equally like other taxpayers under the Personal Income Tax Act. During the year, he was charged the advance payment of the personal income tax, while his personal income tax was levied by means of the decision on personal income tax and was not higher compared to comparable workers with the same gross income. Thus, the procedure of assessment of discriminativeness was completed. (050-13/2021/11)

Unequal treatment of blind persons and persons with reduced mobility in the method of determining eligibility for the assistance and attendance allowance

The Advocate was approached by an individual, who alleged discrimination on the grounds of parenthood or disability. As a disabled person with a recognized disability of category I, he claimed that discrimination in comparison to blind persons exists in the criteria for obtaining assistance and care allowance. He claimed that the criteria allegedly treat blind persons more favourably, as they receive such allowance automatically after their application for the assistance and care allowance is considered with the Disability Commission. Conditions for obtaining assistance and care allowance are laid down in Article 99 of the Pension and Disability Insurance Act (PDIA-2), for persons with blindness it is regulated separately in Article 100 of the PDIA-2. The Advocate assessed that the situations of the compared groups of persons were not comparable. The fact that the two groups (with different forms of disability) are not comparable is also demonstrated by the fact that in the Slovenian legislation the rights of persons with visual impairments and the rights of persons with physical disabilities are regulated differently, depending on the needs of each group with regard to the form of disability. Furthermore, the client's indications that the assistance and service allowance is granted automatically to persons with blindness are not true. The Pension and Disability Insurance Institute expert body treats both people with visual impairments as well as people whose ability to move is reduced by 70%. For the blind, blindness is confirmed and the date of its occurrence is determined, and for the insured persons with reduced mobility, the reduced possibility by at least 70 % is confirmed and the date of its occurrence is determined. In view of the above, the Advocate did not carry out a more detailed assessment of discriminativeness. Thus, the procedure of assessment of discriminativeness was completed. [\(050-18/2020/20\)](#)

1.6.4 The Advocate's recommendations regarding the personal ground of disability

Recommendation on the Draft Act on Payment of the Assistance and Attendance Allowance

The Advocate recommended that the MLFSAEO should submit the Draft to the Government with the purpose of forwarding to the National Assembly for legislative procedure in order to eliminate injustices related to the failure to pay the assistance and service allowance in the period from 1 January 2003 until 31 December 2016 for those whose parents exercised the right to childcare allowance at that time. [\(0070-1/2021/1\)](#)

Recommendation status: ● Taken into account by adopting the Act on Payment of the Assistance and Attendance Allowance (Official Gazette of the Republic of Slovenia, No. 121/21).



Recommendation on the Draft Act Amending the Personal Assistance Act

The Advocate made a recommendation to the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MLFSAEO), where caution was expressed regarding solutions that do not expand, but rather narrow down or have so far narrowed down the accessibility of personal assistance, e.g. the planned increase of the threshold of entitlement to personal assistance from 30 to 40 hours per week and the age threshold that prevents the acquisition of the right to personal assistance for people over 65 and under 18 years of age. (0070-2/2021/1)
Recommendation status: ● Not taken into account.

Recommendation of the Draft Act on the Provision of Funds for Investments in the Slovenian Health Care in the Years 2021 to 2031

The Advocate recommended that the Ministry of Health should commit to achieving the key objectives set out in the Resolution on the National Health Care Plan 2016-2025, in particular the goal of overcoming health inequalities. It was also recommended that the Draft should set out in a more specific manner the objectives of the capacity development of nursing homes and hospitals, the need for adequate palliative care for patients and the means of ensuring accessibility of health services for people with disabilities. (0070-11/2021/1)
Recommendation status: ● Not taken into account.

Recommendation on the Draft Act on Payment of the Assistance and Attendance Allowance

The Advocate recommended that the Act be adopted to eliminate injustice from 2003 to 2016 which arose due to the failure to pay the assistance and service allowance for blind children and those involved in special education programs until the age of 26. (0070-1/2021/3)
Recommendation status: ● Taken into account by adopting the Act.

Recommendation on the Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports

Based on the assessment of discrimination of the Act, it was recommended to the MESS that a proposal to amend the Act be submitted to the National Assembly as to include top deaf athletes with disability, medal winners from the World Championships in the Olympic collective and individual sporting disciplines or disciplines for deaf athletes (Olympic in terms of disciplines represented at the Olympics) among the beneficiaries of the pension supplement (050-25/2021/2)

Recommendation status: ● Taken into account by adopting the Act Amending the Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports (AR-SPWOAS-A, Official Gazette of the Republic of Slovenia, No. 119/21), proposed by Members of the Parliament.

Recommendation on the Draft Act Amending the Placement of Children with Special Needs Act

The Advocate recommended to the Committee of the National Assembly for Education, Science, Sport and Youth that as part of the discussion on the draft act, a broader consensus be reached among all stakeholders, especially those who face the daily challenges of children with special needs in the educational process and beyond. It was also recommended that the Committee should adopt solutions addressing to the greatest extent possible the most pressing practical issues faced by all children with special needs in education. (001-4/2021/8)
Recommendation status: ● Taken into account.

Recommendation on the Implementation of the educational process for children with special needs in case of re-closure of schools

The Advocate recommended that the MESS should ensure the implementation of the educational process for all children with special needs in all educational institutions, and not only for those who are enrolled in schools with special needs education and specialised institutions. (0702-49/2021/3)
Recommendation status: ● Not taken into account.

Recommendation on the Draft National programme of higher education 2021–2030

The Advocate recommended to the MESS that additional goals and measures be added to the national programme to ensure the monitoring of the actual implementation of equal opportunities for students with different personal grounds, to introduce special, dedicated scholarships for students with special needs and incentives for training and raising awareness of the teaching staff in the field of human rights and protection against discrimination of students with special needs. (0070-19/2021/1)
Recommendation status: ● The Act is still in the process of adoption.

Recommendation on improving access to information and television for the persons with sensory disabilities

Based on the findings of the discrimination investigation procedure with regard to persons with sensory disabilities in accessing television content, the Advocate recommended that the Government should take a more active role in ensuring accessibility of the media to persons with disabilities. Rules by the competent ministry, which would also prescribe minimum requirements in this field, should have been adopted by the end of 2011. (0700-29/2019/50)
Recommendation status: ● Not taken into account.



Recommendation on the Draft Act Amending the Audiovisual Media Services Act

In the recommendation to the MC regarding the proposed Draft Act, the Advocate stood up for a wider accessibility of all services to ensure access to audiovisual media services (including websites, web applications and electronic program guides, provision of information on accessibility and accessible formats) and proposed consideration to enact stricter controls regarding the implementation of accessibility requirements. (0709-48/2020/7)

Recommendation status: ● Not taken into account.

Recommendation on the Draft Consumer Protection Act

The Advocate recommended that the MEDT should include a clear provision in the Act on the prohibition of consumer discrimination; obligations to ensure accessibility in communication with consumers with disabilities in appropriate language and alphabet; and on the prohibition of advertisements promoting inequality, intolerance and hatred. (0070-14/2021/1)

Recommendation status: ● The legislative process is still ongoing.

Recommendation on the preparation of the Action Programme for Persons with Disabilities 2022–2026

In the recommendation directed at the MoJ, the Advocate recommended that measures be envisaged to address the existing legal shortcomings in the definition of prohibition of discrimination on the grounds of disability and to prepare normative and other measures to ensure the protection of rights in the communication of people with disabilities in judicial and other proceedings that would apply to all disabled persons. At the same time, measures are to be prepared to strengthen the legal protection of victims of discrimination on the grounds of disability, in particular in connection to harassment in employment or at work and in the prevention of retaliation. (141-2/2021/2)

Recommendation status: ● Partially taken into account by amending the action programme and the announced changes to the regulations.

Recommendation on the proposal for the commencement of proceedings for the amendment of the Constitution by adding Article 62a

The Advocate recommended that the National Assembly should adopt the Constitutional Act to supplement the Constitution with a new Article 62a to explicitly recognise the right of linguistic minorities of the deaf and deaf-blind or persons with certain forms of sensory disabilities to the use of their own language. The Advocate also recommended the adoption of appropriate laws. (0070-6/2021/1)

Recommendation status: ● Taken into account by adopting the Constitutional Act.

1.6.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of disability

EASIT (Easy Access for Social Inclusion Training) project “Audiovisual journalism and easy-to-understand language” closing event

The Head of the Advocate Miha Lobnik participated in the closing event of the Erasmus+ project EASIT (Easy Access for Social Inclusion Training), held by the RTV Slovenia and the project partners on 14 June 2021. The event was designed to promote easy reading. Within the project, a curriculum and teaching materials for the education of easy reading professionals in the field of audiovisual media (journalism, audio descriptions and subtitling) were prepared. In his welcome address, the Head of Advocate underlined the importance of efforts to ensure equal access to information to all people without discrimination and the importance of ensuring accessibility and developing new skills and approaches in this area. He also mentioned his own efforts to provide information on equal opportunities and the Advocate's services in easy reading, which could contribute to preventing discrimination and facilitating the protection of people who are victims of discrimination.

THE ADVOCATE HIGHLIGHTS

Article 62a (Sign Language and Tactile Sign Language)

The freedom to use and develop the Slovene sign language shall be guaranteed. In those municipalities where Italian or Hungarian are also official languages, the freedom to use the Italian or Hungarian sign language, respectively, shall be guaranteed. The use of these languages and the status of their users shall be regulated by law.

The freedom to use and develop tactile sign language shall be regulated by law.



1.6.6 The Advocate's cooperation with civil society with regard to the personal ground of disability

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.

The written cooperation relating to the spatial accessibility of secondary schools for students with reduced mobility included questions regarding the experience of NGO with spatial accessibility of secondary schools for students with reduced mobility, the number of cases of inaccessibility, cases of refusal to enroll students with reduced mobility in a particular secondary school, possible advisory activities to secondary schools on ensuring accessibility, other necessary accommodations taken by secondary schools in favour of students with reduced mobility and the reasons for limited accessibility of secondary schools to students with reduced mobility at the national policy-making level.

The cooperation in writing regarding the challenges faced by the deaf in the field of education was related to questions on the perceived problems of the deaf in the field of primary, secondary and higher education, the reasons for poor education attainment of the deaf, examples of good practices to improve the education of the deaf and the impact of the covid-19 epidemic on the education of the deaf. The Advocate included the responses received in a special report on the situation of the deaf in the education system.²

Meeting with the RTV Slovenia's Viewers' and Listeners' Rights Ombudsman

On 26 May 2020, the Advocate's associates met with the RTV Slovenia's Viewers' and Listeners' Rights Ombudsman Ilinka Todorovski. The meeting was devoted to the mutual introduction of the institutions while the discussions concerned some topical subjects such as the accessibility of television programme content, protection against discrimination in the context of artificial intelligence, hate speech, consequences of the coronavirus epidemic, in particular the rise of political intolerance and shrinking the space for public professional debate.

² Available at: <https://www.zagovornik.si/posebna-porocila/>

1.7 Age

1.7.1 Advisory, informing and support activities related to the personal ground of age

Asking a candidate for a vacancy the question “Are you familiar with the year of your birth?” does not represent discriminatory conduct

A candidate for a vacancy was asked by a member of the interview commission: “Are you familiar with the year of your birth?” The candidate considered the question as unnecessary and offensive in the context of his lack of knowledge related to the previous two questions, and as a result also discriminatory. The Advocate confirmed to the client that a candidate in the recruitment procedure undoubtedly enjoys protection against discrimination, but not every question based on a personal ground can be considered controversial. The answer to this question is indeed related to the personal ground of age, but the candidate’s age is known to the employer or commission while being evident from the candidate’s application. Moreover, in the specific case, the client identified as discriminatory the question itself, without alleging discrimination on the grounds of age. In view of this, the Advocate concluded that the case does not indicate the occurrence of discrimination under the provisions of PADA. However, this decision does not mean that such a question is sensible or appropriate. Moreover, it cannot be excluded that the question was asked in order to test the candidate’s response. But in any case, the consideration of such conduct by a member of the Interview Commission does not fall within the competence of the Advocate. Hence, the advisory procedure with the client has been completed. **(0702-102/2021)**

Proportionality of measures introduced by a nursing home which restricted visits during the covid-19 epidemic

The Advocate was approached by an individual regarding the rules for visitors of a nursing home who highlighted the discriminatory effect of such measures with regard to bedridden residents in comparison to those that are not bedridden. Given the severity of the situation during the third wave of the epidemic and the fact that the elderly represent an extremely vulnerable group in the case of infection with the virus, the Ministry of Labour, Family, Social Affairs and Equal Opportunities prepared a specific protocol. In the specific situation, the Ministry of Health called for monitoring visits, or even for a general restriction or ban on visits. At the same time, the Ministry added that the patient’s right to protection of privacy (personal dignity) needs to be respected in the implementation of such measures, as the restrictive interventions should not be disproportionate. Accordingly, individual nursing homes have adopted their own internal instructions. The Advocate explained to the client that the proportionality of the measures adopted by a specific nursing home can be assessed within a discrimination investigation procedure. Hence, the advisory procedure with the client has been completed. **(0702-67/2021)**



In cases of improper and unprofessional treatment with signs of violence, a report to the competent authority must be submitted

The Advocate received a letter from an individual bringing to its attention particular problems in a specific nursing home (NH) by means of a conducted survey. She brought to light alleged abuse of residents by caregivers, violence among caregivers, lack of psychological support, interruption of physiotherapy and occupational therapy during the epidemic, restricted movement of residents, etc. In this regard, the Advocate explained to the client that the supervision over the implementation of institutional care for the elderly in general, in matters not related to discrimination, is carried out in accordance with the applicable legislation by various inspection services (social inspection, health inspection). It was pointed out that, in accordance with the Social Assistance Act, residents (users of services) who are not satisfied with a particular service have the possibility of submitting an objection against the work of a professional or an associate before the council of the social security institution, and to the Social Chamber if the service by a private individual is disputable. An individual who believes that his social security rights stemming from the Code of Ethical Principles in Social Welfare have been violated can also submit a written complaint with the Honorary Arbitration Board of the Social Chamber of Slovenia. At the same time, the Advocate pointed out that in the cases brought to its attention no action can be made as within the competences under the PADA, the equality body is only competent for practices which satisfy the elements of discrimination. In cases of improper treatment with signs of violence, a report to the police must be submitted, while in the case of unprofessional treatment by a NH professional, a report must be submitted either with the council of the social security institution, the Social Chamber or the Social Inspection. The Advocate offered the client that the information submitted can (even anonymously) be forwarded to the competent supervisory institutions. The client did not respond to the Advocate's clarification. Hence, the advisory procedure with the client has been completed. (0702-155/2020)

The suitability for use of a particular type of vaccine is not a matter of discrimination

As one of the addressees of the NGO's public letter, the Advocate was asked to provide answers to the public questions raised in the field of vaccination. The Advocate analysed the issues raised from the perspective which relates to its field of activity. Regarding most of the issues, the Advocate noted that these were professional issues falling within the health profession, on which no comments can be made by the Advocate. As for the remaining matters, the Advocate explained that no statement can be made whether or not discrimination in general occurred without a prior implementation of the discrimination investigation procedure. One of the questions asked was whether or not the decision to give the AstraZeneca vaccine to nursing home residents and the Pfizer vaccine to other elderly people living at home was appropriate. The Advocate explained that discrimination could be confirmed or excluded only following an administrative procedure of discrimination investigation. It was also pointed out that the appropriateness of the use of a particular type of vaccine was an issue of the health profession and not the issue of discrimination. Hence, the advisory procedure with the client has been completed. (0705-12/2021)

A limited number of enrolment places in secondary schools does not constitute discrimination

The Advocate was approached by a mother of a ninth-grader, who highlighted the restrictions on enrolment in almost all grammar schools in Ljubljana stating that the number of points required for enrolment is much higher compared to previous years. She considered that it was a systemic violation of children's rights and discrimination based on the personal ground of the age in the particular enrolment year. The Advocate explained that different generations of children or adolescents enrolling in educational programmes are not in a comparable situation. Each generation is defined by their numerosity, success and other factors that accompany the education process. The right to education cannot be interpreted in such a way that each candidate must be provided with a place at the desired educational institution or type of educational institution. The right only provides for the possibility to apply for the desired place under non-discriminatory conditions in relation to other candidates within the specified enrolment period. Hence, the advisory procedure with the client has been completed. [\(0702-109/2021\)](#)

Inappropriate online publication does not necessarily represent incitement to discriminate

A non-governmental organisation drew the Advocate's attention to the controversial publication on an online forum, which, according to their opinion, contained incitement to discriminate against pensioners. The Advocate explained to the client what are the elements of incitement to discriminate under Article 10 of the PADA. Regarding the specific case, the Advocate explained that the final assessment of whether discrimination has occurred can only be made after the completed administrative procedure. It was pointed out that many publications are inappropriate, however the content may not necessarily meet the standards or fulfil the conditions of incitement to discriminate. The client did not choose to submit a complaint. Hence, the advisory procedure with the client has been completed. [\(0702-157/2021\)](#)

Not every conduct that promotes dissent can be considered one of the forms of discrimination

The Advocate was informed by an association about an inappropriate content on the web portal predlagam.vladi.si regarding a proposal for the abolition of pensions. The association disagreed with the findings of the Government Communication Office (UKOM) and the explanation provided, and pointed to a number of inappropriate comments under the publication. The Advocate explained to the client that the assessments of such content are primarily based on the doctrine that the expression of opinions on socially important topics is permissible until one of the forms of discrimination under PADA occurs or the line to any criminal offence is crossed. Moreover, attention was drawn to the importance and role of freedom of expression. Not every conduct that promotes dissent or triggers a number of comments can be considered one of the forms of discrimination. The Advocate explained that in the specific case, the publication lacks particular elements of incitement to discriminate, which must be fulfilled according to the PADA. The case dealt with a suggestion by one of the users of the portal, which is certainly problematic or even extremely inappropriate, but it is also unrealistic.



The proposal remains at the level of written text and therefore does not lead to any unfavourable treatment compared to other population group, nor can it hypothetically lead to any poorer treatment, i.e. the abolition of pensions. In addition, when examining the record, the Advocate found that the portal operator had deleted the offensive comments under the record while keeping comments critical to the record, thus significantly contributing to the level of communication of the portal users, while depriving the record of the potential of calling and incitement to discrimination. These are the essential reasons why the Advocate addressed the case in the context of advisory procedure and no discrimination investigation was launched. Hence, the advisory procedure with the client has been completed. (0702-5/2021)

1.7.2 Discrimination investigation in relation to the personal ground of age

With the help of the Advocate, a settlement was reached regarding the payment of performance bonuses to a worker who meets the conditions for old-age retirement

The Advocate considered the case of an individual who alleged discrimination based on the personal ground of age in the amount of remuneration for work. The client explained that the employer reduced his personal income from performance by almost 30 % since he met the conditions for old-age pension. His personal income is now lower by several salary classes compared to other employees, namely almost for the amount of his partial pension granted by the Pension and Disability Insurance Institute of Slovenia. The Advocate called on the employer to submit the respective documentation and clarifications. In the reply, the company explained that the basic salary of the worker was not reduced, only the right to some salary supplements had ceased. Moreover, the employer denied the complainant's allegations that other employees in comparable positions were receiving a salary which is higher for several salary classes. After receiving the employer's explanations, the Advocate contacted the complainant requesting additional explanations. The Advocate further addressed a clarification, to the complainant, stating which possibilities would they have as a client to the proceedings, as the complainant had difficulties to decide whether to continue the proceedings. Subsequently, the complainant informed the Advocate that after the Advocate's letter, certain things started to improve, he was granted half of the previous salary supplements and the pressure he was experiencing to retire has ceased. Since a settlement was reached between the parties, the Advocate issued the decision suspending the proceeding. (Decision on the suspension of the proceeding No. **0700-23/2021** of 12 October 2021)

The Advocate did not find discrimination in the medical treatment of a covid-19 patient

The Advocate noted that the medical staff did not violate the prohibition of discrimination in the medical treatment of a 92-year-bedridden nursing home resident with dementia who fell ill with covid-19 and later died in hospital. Based on the opinion of a medical expert, it was concluded that the methods of medical treatment were not related to the patient's age. Moreover, it was found that the patient was treated differently from other hospitalised patients with covid-19 as her medical condition was different which was an appropriate approach that cannot be considered discriminatory. As of 31 December 2021, the decision was still not final. (Decision No. [0700-9/2021/29](#) of 29 November 2021)

Discrimination was not confirmed in the medical treatment of nursing home residents of homes with covid-19

In the process of discrimination investigation against residents of nursing homes with covid-19, the Advocate did not confirm the allegations that hospital treatment was denied to them due to their age, health status and place of residence, although they needed it. Hence, it was concluded that the recommendation to prepare stability assessments for advanced and incurable chronic disease of nursing home residents during the first wave of the epidemic by the Ministry of Health was not discriminatory. Neither were nursing home health professionals following the recommendations by the Ministry acting in a discriminatory way. Findings from the procedure do not mean that all nursing home residents certainly received appropriate medical treatment when they became ill with covid-19, but it is a question of a professional opinion of an individual doctor and exceeds the Advocate's competences. As of 31 December 2021, the decision was still not final. (Decision No. [0700-32/2020/119](#) of 21 December 2021)

Setting the age limit for obtaining consumer credit does not constitute discrimination

Based on the information provided by an individual who was unable to obtain a bank credit due to his age (76 years), the Advocate of the Principle of Equality initiated an ex officio discrimination investigation procedure. The Advocate noted that the Bank treated borrowers differently with regard to their age and attempted to determine whether such treatment was justified or permissible. The Protection against Discrimination Act (PADA) provides for a general exception to the prohibition of direct discrimination. Unequal treatment based on a particular personal ground does not constitute discrimination if the difference in treatment is based on a legitimate objective and the means to achieve that objective are appropriate, necessary, and proportionate. The Advocate found that the bank's objective of responsible lending, which follows the legal regulations aimed at successful credit risk management, is legitimate, hence it was further assessed whether the set age limit for borrowers was an appropriate, necessary and proportionate measure. In the proceedings, the Advocate found that by adopting the Credit Policy, which sets the age limit of 75 years as the maximum age of the borrower at the maturity of the consumer credit transaction, the Bank did not violate the prohibition of discrimination, as the exception granted is in accordance with the PADA. The decision has become final. (Decision No. [0700-49/2020/4](#) of 5 March 2021)



1.7.3 Assessments of discrimination of regulations with regard to the personal ground of age

According to the Advocate, the dismissal of workers who meet the conditions for old-age retirement without specifying any reasons represents discrimination

Based on complaints by several trade unions, the Advocate conducted an assessment of discriminativeness of Articles 21 and 22 of the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (Set of measures to mitigate the effects of the epidemic No. 7, SMME7), which allowed employers to dismiss only workers who have reached the age of 60 and have 40 years of pensionable service or 65 years and 15 years of pensionable service without giving any reasons. In the proceedings, the Advocate considered that such an arrangement is discriminatory and inconsistent with several articles of the Constitution, as it interferes with the right to protection against direct discrimination on the grounds of age in dismissal and with regard to the security of the employment relationship duration. A request for a constitutional review of these two Articles of the Set of measures to mitigate the effects of the epidemic No. 7 was submitted to the Constitutional Court, which has the final word on whether a regulation is incompatible with the Constitution or not. However, during the parliamentary procedure of adopting this Set of measures, the Advocate recommended that the Parliament Members and the Government reconsider and carry out a proportionality test of the proposed regulation. The Constitutional Court issued a Decision No. U-I-16/21-17 and U-I-27/21-12 of 18 November 2021 stating that the measure was incompatible with Article 8 of the Constitution. [\(050-4/2021/12\)](#)

According to the Advocate, unequal treatment of persons with disabilities in access to personal assistance based on their age represents discrimination

The Advocate received a complaint, in which the complainant alleged the discriminativeness of Article 6 of the Personal Assistance Act. The complainant stated that he has been caring for his wife who is disabled and needs continuous care or assistance for 15 years. Since she was older than 65, her right to obtain personal assistance was denied by a decision. He considers that a legal age limit for the right to personal assistance would be logical and appropriate if long-term care were provided. However, as long as there is no statutory long-term care, the age limit is inappropriate given that the PAA provides for partial exemptions in the fourth paragraph of Article 6. In the course of the proceedings, the Advocate assessed that setting the age limit as a condition for the acquisition of the right to personal assistance does not in itself automatically constitute discrimination if there is a system in the country under which beneficiaries who exceed the set age limit would also have access to comparable social services that could equally satisfy their needs for independent living, in the spirit of deinstitutionalisation, in order to enable them to have an independent, active lifestyle and ensure integration into society. However, since there are no comparable social services for this group of users, neither in the scope and nature of the services nor with regard to the financial burden of the beneficiary, the Advocate assessed that the regulation under the PAA is discriminatory and constitutes direct discrimination on the grounds of age.

By means of recommendation on the Draft Act Amending the Personal Assistance Act No. 0070-2/2021/1, the Advocate recommended that the Government of the Republic of Slovenia should amend the Draft Act as to eliminate the discriminatory age threshold of 65 for the acquisition of the right to personal assistance set out in the 3rd indent of the second paragraph of Article 6 of the current PAA. The recommendation was not taken into account. The discriminatory assessment procedure has thus been completed. (050-16/2020/17)

The termination of the payment of occupational insurance contributions in case of fulfilment of the conditions for old-age retirement does not constitute discrimination

The Advocate received a complaint regarding paragraph 10 of Article 202 of the Pension and Disability Insurance Act (PDIA-2), according to which an employer may stop paying contributions for occupational insurance for an insured person who meets the conditions for acquiring the right to an occupational pension. The complainant stated that despite the fulfilled conditions, he continues to work because he would like to complete the full pension period and therefore he remains in the same established workplace, with the same description of works and tasks, the same responsibility and the same schedules. However, his right to supplementary pension insurance is abolished. The Advocate noted that the Higher Labour and Social Court had already ruled on a comparable case in the judgement No. Pdp 795/2019. A view was taken that the purpose of occupational insurance is to ensure that those who perform particularly difficult and harmful work or work which cannot be successfully performed after a certain age become entitled to an occupational pension which they acquire before they acquire the right to an old-age pension. According to the assessment of the Court, once the insured person has fulfilled the conditions for acquiring the right to an occupational pension, there is no longer a need to pay contributions to occupational insurance. From the perspective of the Advocate's competences, it is also relevant that the complainant who alleges discrimination is comparing his situation to the situation of his colleagues who are not in a comparable situation (e.g. with a colleague who has acquired the right to old-age pension, continues to work and receives a pension supplement to his salary). It is true that according to the law, the employer has the possibility to terminate the payment of contributions or not to. As long as the decision to stop paying contributions is not based on the personal grounds of individuals, it is not a matter of discrimination. In view of the above, the Advocate did not carry out a more detailed assessment of discriminativeness. Thus, the procedure of assessment of discriminativeness was completed. (050-12/2021/3)

Adjusting the way in which pupils, high school students and students obtain the so-called Zois scholarship with regard to the covid-19 epidemic is not discriminatory

The Advocate received a complaint related to the issue of the provisions of the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (Official Gazette of the Republic of Slovenia, No. 80/20). The complainant pointed to the regulation during the covid-19 epidemic, according to which in 2021 priority was given to those who showed outstanding achievements in the school years 2017/2018 and 2018/2019. Achievements attained in the 2019/2020 school year were invalidated, although the competitions were held until the state of epidemic was declared on 15 March 2020.



Since there were no competitions at the level appropriate for obtaining the Zois scholarship in the school year 2020/2021, the complainant considered that in this way two generations of pupils, high school students and students would be treated unequally and be deprived of the scholarship. The Advocate concluded that the reason for the different treatment was not a personal ground of the individuals. The regulation takes into account the fact that it was impossible to carry out the competitions and equalises the positions of all persons who participated or intended to participate in competitions in the school year 2019/2020. According to the Advocate, the circumstances of the achievement attained in a given year and the criteria according to which exceptional achievements in the school year 2019/2020 were not considered relevant, cannot be considered as a personal ground under the PADA. If the Ministry had not prepared the described solution from the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic, those students who participated or intended to participate in the competitions that were not completed would have been in a worse position compared to those who attended the completed competitions. In view of the above, the Advocate did not carry out a more detailed assessment of discriminativeness. The discriminatory assessment procedure has thus been completed. (050-33/2020/3)

The exclusion of full-age students from the solidarity allowance for children does not represent discrimination

The Advocate received a complaint to examine the one-off solidarity allowance for children from the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (SMMEE7). The complainant alleged that the legislator had overlooked adult students who were also entitled to subsidised meals but were not entitled to the solidarity allowance. According to the complainant, such regulation represents discrimination and violation of the Constitution. The Advocate assessed that, in the specific case, families with children who are students over 18 years of age and are not entitled to the one-off solidarity allowance under the contested Act and families with children younger than 18 years of age who are entitled to the one-off solidarity allowance under the same Act are to be compared. The question of whether or not a student has a right to subsidised meals is not relevant, as the solidarity allowance is linked to the juvenility of the child. These two categories of beneficiaries (families and adult children on the one hand and families with minor children on the other) are not in a comparable situation, not in times when there is no epidemic and all the more when the consequences of the epidemic need to be addressed through specific measures. The fact that these groups of beneficiaries cannot be compared is also demonstrated by the fact that the Parental Protection and Family Benefits Act (PPFBA-1) and Exercise of Rights from Public Funds Act (ERPFA) regulate child allowances for beneficiaries who have minor children, but not for children over the age of 18, regardless of whether they have subsidised meals or not. In view of the above, the Advocate did not carry out a more detailed assessment of discriminativeness. The discriminatory assessment procedure has thus been completed. (050-5/2021/5)

The exclusion of children born in 2020 before declaring the state of epidemic from the solidarity allowance was eliminated and therefore does not represent discrimination

Several complainants approached the Advocate and pointed to problems related to the solidarity allowance for children in the amount of EUR 500. The allowance was provided by the Government of the Republic of Slovenia under the Set of measures to mitigate the effects of the epidemic No. 7 (Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic) and was intended only for children born after the declaring the state of epidemic, i.e. after 12 March 2020. The complainants took the view that the proposed measure tends to disadvantage all other children born in 2020 before the epidemic was declared. The Advocate noted that the regulation had already been amended accordingly during the procedure, namely in such a way the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of the COVID-19 Epidemic, which entered into force on 31 January 2020 and includes all children born from 1 January 2020 onwards. In view of the above, the Advocate did not carry out a more detailed assessment of discriminativeness of the regulation. The discriminatory assessment procedure has thus been completed. [\(050-31/2020\)](#)

The regulation of health insurance rights by a bylaw is not appropriate

The Advocate of the Principle of Equality received a complaint to address allegedly discriminatory and unconstitutional provisions of Article 34 of the Rules on Compulsory Health Insurance. The aforementioned provision stipulates that an insured person has the right to orthodontic treatment, which also includes the manufacture of a suitable orthodontic braces, if, according to the doctrinal definitions of the orthodontic profession, the person has a medium, difficult or very difficult form of irregularity of the teeth and jaws. Insured persons are entitled to such treatment up to the age of 18 and before this age if the need for treatment was established at least two years before the person reached the age of 18. The complainant considered that such arrangement discriminates against all those who lose their milk teeth later in their childhood. In the case, the Advocate found that the complainant is already a party to a judicial proceeding due to the denial of orthodontic treatment. Hence, the Advocate advised the client to point out in the court proceedings that restrictions on the grounds of age are not permissible if taken by means of by-law. Age limit, which is not necessarily controversial, can only be set by a law. In view of the above, the assessment of discriminativeness has been suspended. [\(050-24/2021/7\)](#)



According to the Advocate's assessment, setting the minimum age of children for the admission to kindergarten does not represent discrimination

The Advocate received a complaint to address the regulation that sets the minimum age limit for the admission to kindergarten. The complainant alleged that the Municipal Rules on the Admission of Children to Kindergarten and the Rules Amending the Rules on the Admission of Children to Kindergarten were discriminatory. She pointed out that children who reached the age of 11 months in the given enrolment year (e.g. 2021/22) up to and including 1 October 2021, which is a condition for admission to kindergarten, were considered at the Commission for Admission to Kindergarten. She added that children under 11 months are only considered if a new unit is opened. Hence, due to the Municipal Rules, such children fail to get a place in a kindergarten. She mentioned an example of a child who had reached the age of eleven months on 5 October 2021 and was therefore not considered by the Commission. The complainant asked the Advocate to consider the Rules in terms of discrimination on the grounds of age. The Advocate assessed that the age limit for admission to kindergarten referred to in the second paragraph of Article 20 of the Kindergartens Act is not discriminatory. Children under 11 months of age and children over 11 months of age are not in a comparable situation due to the different level of psychophysical development and the different possibilities for care by their parents. The age limit follows the normal psychophysical development of the child, to make sure that the child is capable of inclusion in kindergarten. On the other hand, the age limit forces parents or guardians to use parental leave, thus ensuring that the child spends time with his parents or guardians in the most sensitive period and is not (yet) included in kindergarten. Parenting and parental care are not just about rights but also responsibilities that concern childcare, i.e. upbringing, protection and care. Additionally the Advocate assessed that the distinction with regard to the age of children in the possibility of enrolment in kindergarten is according to the principle of proportionality justified. The Advocate assessed (assuming the comparability of situations) that the minimum age for the admission of children to kindergarten does not constitute discrimination, as such differential treatment is based on a legitimate objective and the means of achieving this objective are adequate, necessary and proportionate. Thus, the procedure of assessment of discriminativeness was completed. [\(050-26/2021/3\)](#)

According to the Advocate, conditioning the crossing of municipal borders on the use of the application #OstaniZdrav represents discrimination

Based on 11 reports of alleged discrimination, the Advocate of the Principle of Equality undertook the process of assessing the discriminativeness of the Government's Decree on the Restriction of Movement in force between 15 and 24 December 2020. In addition to the 13 substantive exceptions for the crossing of municipal borders, the Ordinance stipulated that persons with a smartphone and an application to track the contacts with those infected with the coronavirus #OstaniZdrav may also cross borders between municipalities within individual statistical regions. Those reporting the alleged discrimination referred to unequal treatment on the basis of age and property status. In assessing the discriminativeness of the regulation, the Advocate assessed the measure using the proportionality test and concluded that the goal pursued by the Government was legitimate. However, the manner in which the Government attempted to additionally contain the spread of the virus was, according to the Advocate, only partially appropriate, as the objective cannot be achieved solely by using such application.

Since the application is not used by everyone, the Advocate also assessed that it may be useful but does not necessarily lead to achieving the goal of containing the spread of the coronavirus disease. Hence, the Advocate concluded, that the regulation from Article 6 of the Ordinance cannot be regarded as an exception to the prohibition of indirect discrimination against older persons and persons with worse financial situation (as well as persons with certain disabilities) who do not own a smartphone or cannot use it. As a result of the Ordinance, these persons were in a disadvantaged situation compared to others, as they were disproportionately prevented from free movement between municipalities, as they could not meet the condition of installing the application due to their personal ground of age and property status (or disability). The Ordinance was therefore discriminatory. Given that the Ordinance containing the discriminatory provision was no longer in force, the Advocate decided not to submit a request for reviewing the constitutionality with the Constitutional Court of the Republic of Slovenia. Nevertheless, it was recommended that the Government of the Republic of Slovenia should take into account the principle of equal opportunities in the future imposition of measures. No response to the recommendation was received by the Advocate. The discriminatory assessment procedure has thus been completed. (050-30/2020/34)

1.7.4 The Advocate's recommendations regarding the personal ground of age

Recommendation on the Draft Act Amending the Personal Assistance Act

The Advocate made a recommendation to the MLFSAEO, where caution was expressed in relation to solutions that do not expand, but rather narrow down or have so far narrowed down the accessibility of personal assistance, e.g. the planned increase of the threshold of entitlement to personal assistance from 30 to 40 hours per week and the age threshold that prevents the acquisition of the right to personal assistance for people over 65 and under 18 years of age. (0070-2/2021/1)

Recommendation status: ● Not taken into account.

Recommendation on the implementation of the National Covid-19 Vaccination Strategy

The Advocate recommended that the Government should use all available resources and measures to ensure that the most vulnerable groups, in particular the elderly and persons with chronic diseases, get vaccinated consistently and as early as possible. In doing so, the right to equal treatment of inhabitants should be respected irrespective of their place of residence. (0709-23/2021/1)

Recommendation status: ● Taken into account.

Recommendation of the Draft Act on the Provision of Funds for Investments in the Slovenian Health Care in the Years 2021 to 2031

The Advocate recommended that the Ministry of Health should commit to achieving the key objectives set out in the Resolution on the National Health Care Plan 2016-2025, in particular the goal of overcoming health inequalities. It was also recommended that the Draft should set out the objectives of the capacity development of nursing homes and hospitals in a more specific manner, as well as the need for adequate palliative care for patients and the means of ensuring accessibility of health services for people with disabilities. (0070-11/2021/1)

Recommendation status: ● Not taken into account.

Recommendation on the Draft Act on Payment of the Assistance and Attendance Allowance

The Advocate recommended to the National Assembly that the Act be adopted to eliminate injustice due to the failure to pay the assistance and service allowance for blind children and those involved in special education programs until the age of 26. (0070-1/2021/3)

Recommendation status: ● Taken into account by adopting the Act.

Recommendation on the Draft Act Amending the Personal Assistance Act

Among other things, the Advocate recommended that the Act be amended to remove the discriminatory age threshold for the acquisition of the right to personal assistance for those over 65 years of age and to define more specifically the position of children (persons under 18 years of age) in a way, which will ensure the enjoyment of all rights and obligations in accordance with their age and maturity. (0070-2/2021/10)

Recommendation status: ● Not taken into account.

Recommendation on the Draft Act Amending the Placement of Children with Special Needs Act

The Advocate recommended to the Committee of the National Assembly for Education, Science, Sport and Youth that as part of the discussion on the draft act, a broader consensus be reached among all stakeholders, especially those who face the daily challenges of children with special needs in the educational process and beyond. It was also recommended that the Committee should adopt solutions addressing to the greatest extent possible the most pressing practical issues faced by all children with special needs in education. (001-4/2021/8)

Recommendation status: ● Taken into account.


Recommendation on the Draft Long-Term Care Act

In the recommendation aimed at the draft act, the Advocate called for the inclusion of the right to equal treatment in the text of the regulation and that discrimination in the use of long-term care services be prohibited. Supplementing of the draft act by defining the right to long-term care as such, breaking down its fundamental elements and thus enabling its protection, as is the case of other human rights, was recommended. The introduction of appropriate redress mechanisms for cases where, according to the care recipients, services were not at an appropriate level. The Advocate also pointed out that the draft act lacks a more detailed clarification of the differences between the right to long-term care and the right to personal assistance. [\(0701-14/2020/12\)](#)

Recommendation status:  Partially taken into account.

Recommendation on the implementation of education in a way that would support the containment and controlling of the covid-19 epidemic

The Advocate carried out an assessment of the discriminativeness of the regulations providing for distant education of pupils and students which lasted for 47 weeks during to the epidemic, and assessed that the closure of schools placed children and adolescents at a disadvantage based on their age compared to other population groups. It was also assessed that school closures negatively affected especially vulnerable groups of children and adolescents. Compared to other residents, the measures also disproportionately affected parents and guardians of school children, who were forced to get involved in the implementation of distance education, which applied especially to women. The Advocate therefore recommended that the Government and the Ministry of Education should refrain from reintroducing school closures in the future. [\(050-15/2021/57\)](#)

Recommendation status:  Taken into account.

Recommendation on the Draft Act on Additional Measures to Prevent the Spread, Mitigate, Manage, Recover and Remedy the Consequences of COVID-19

In connection with the regulation governing distance education and restricting the work of educational institutions during the covid-19 epidemic, the Advocate recommended that a legal framework be established to enable the regulation by means of by-laws that would comply with the principle of proportionality. The Advocate recommended that the objectives of such measures be set out more specifically and that the imposition of such measures be admissible only if absolutely necessary. Moreover, in deciding on the adoption of such measures, the participation of all key professions and stakeholders should be ensured. [\(0070-18/2021/1\)](#)

Recommendation status:  Not taken into account.

Recommendation on the amendment to the Family Code

The Advocate recommended that the MLFSAEO should prepare an appropriate amendment to the transitional provisions of the Family Code so that the courts could decide on the so-called shared custody also in all cases of separation proceedings initiated before 15 April 2019, when this is in the best interests of the child. [\(0709-34/2021/1\)](#)

Recommendation status:  Not taken into account.



1.7.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of age

THE ADVOCATE HIGHLIGHTS

Article 56 of the Constitution of the Republic of Slovenia (Rights of Children)

Children shall enjoy special protection and care. Children shall enjoy human rights and fundamental freedoms consistent with their age and maturity.

Children shall be guaranteed special protection from economic, social, physical, mental, or other exploitation and abuse. Such protection shall be regulated by law.

Children and minors who are not cared for by their parents, who have no parents or who are without proper family care shall enjoy the special protection of the state. Their position shall be regulated by law.

Consultation for the protection and strengthening of the mental health of children and adolescents during the epidemic

On 1 June 2021, a representative of the Advocate attended the Consultation for the protection and strengthening of mental health of children and adolescents during the epidemic, organised by the NIPH. The purpose of the online consultation was to strengthen cross-sectoral dialogue and to bring together various stakeholders in the field of mental health of children and adolescents. The consultation highlighted several measures and activities needed to protect the mental health of children and adolescents. Part of the consultation was carried out in an interactive manner involving group discussions where participants reflected on the causes of the deterioration of mental health of children and adolescents and proposed measures aimed at different age groups of children and adolescents, and children and adolescents in vulnerable situations. This also enabled the Advocate's perspective to be presented.

Expert consultation on medical and social treatment of the elderly during the covid-19 epidemic

The event organised by the Srebrna nit association, which strives for dignified aging, took place on 15 September 2021 online. The participants presented the key issues faced by the elderly during of the covid-19 epidemic, especially those in nursing homes. Problems were highlighted which relate to the restrictions of contacts of the elderly with relatives, personnel problems in long-term care and health care and inadequacy of facilities to care for persons infected with covid-19. The representative of the Advocate presented the work of the Advocate and a survey on the situation in nursing homes during the first wave of the covid-19 epidemic.

Advocate's participation at the Festival of the Third Age

At their own exhibition space, the Advocate also participated in the 20 Festival of the Third Age, which took place between 29 September and 1 October 2021 in Cankarjev dom in Ljubljana and was organised by Proevent and the Ljubljana municipal association of pensioners.

Representatives of the Advocate informed, advised, awareness-raising and presented the work of the equality body at the exhibition. The focus was on informing participants about the possibilities of protection against discrimination based on the personal grounds of age. They were provided with a leaflet presenting the equality body, a form to address discrimination, special reports and the Advocate's Annual Report.



Expert associates of the Advocate informed, advised, raised awareness and presented the work of the institution at the exhibition.

Panel discussion Digitized Society and the Elderly

As part of the Festival of the Third Age, a panel discussion Digitized Society and the Elderly took place on 30 September 2021. Participants, including the representative of the Advocate, discussed how information and communication technologies, digitalisation and related services create and strengthen social stratification and inequality. A representative of the Advocate pointed out that rapid development of technologies and services affected all areas of our lives, therefore we are faced with the fact that e-skills affect the quality of life. Citizens who lack these skills are disadvantaged in various life situations. This is particularly notable in the elderly population. The debate touched on key problems and needs of elderly people and the options for action, including planned measures to improve digital skills of elderly people by the newly established Strategic Council for Digitisation.

1.7.6 The Advocate's cooperation with civil society with regard to the personal ground of age

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.



1.8 Sexual orientation, gender identity and gender expression

1.8.1 Advisory, informing and support activities related to the personal ground of sexual orientation, gender identity and gender expression

Children who identify themselves as LGBTI persons are a particularly vulnerable group

The Advocate received a letter by an association expressing concern regarding the situation of LGBTI youth in public education, in view of the growing homophobia in the political and media environment. The letter highlights the speech of a member of the National Assembly who spoke against “cultural Marxism and LGBT ideology” in Slovenian schools and the cover of the weekly Democracy from 26 August 2021 showing a family in black holding an umbrella that “protects” them from the “rainbow”, entitled “How to protect schoolchildren from the LGBT+ indoctrination”. The Advocate pointed out that children who identify as LGBTI persons are a particularly vulnerable group due to various reasons, which, as the association also underlined, needs special protection. The Advocate pointed out that statements of individuals and publications of various media, often understood as hate speech, are usually addressed by the Advocate in terms of potential harassment referred to in the first paragraph of Article 8 of the PADA or in terms of possible incitement to discrimination referred to in the first paragraph of Article 10 of the PADA. The author of the letter was invited to submit a complaint referring to one of the cases. The association has not decided to initiate the procedure. Hence, the advisory procedure has been completed. [\(0702-183/2021\)](#)

The placement of “LGBTQ+ friendly” labels contributes to the implementation of the principle of equal treatment and prevents discrimination

The Advocate received a question regarding the admissibility of placing the “LGBTQ+ friendly” label at the door of a municipal public institution. The Advocate explained that the placement of such a label and similar labels is welcome. Deeply embedded and entrenched homophobic and transphobic views on sexual orientation and gender identity make LGBTIQ* groups particularly vulnerable to discrimination. LGBTIQ+ friendly means creating a safe public space for persons who identify as part of the LGBTIQ+ community. This is especially important because in the past and even today, many public spaces were or still are not safe (for them). Since they are a vulnerable group, such labels open public spaces for them and contribute to the implementation of the principle of equal treatment and prevent discrimination. As a result, such labels are already consistent with the PADA at the symbolic level. Hence, the advisory procedure has been completed. [\(0702-122/2021\)](#)

The Advocate advised the Security Company which encounters situations of segregation with regard to gender, sexual orientation and gender identity during its work

The Advocate received several letters from a security company protecting restaurants and clubs. In their work, the security company is faced with situations in which they are not sure whether discrimination occurred. In the letter several different situations were described that are of different relevance with regard to protection against discrimination, such as a club reserved for men and a club reserved for same-sex oriented women, and the issue of toilets separated by gender and the related issue of how to treat a transgender person. The Advocate provided some general guidance on the issues raised. It was pointed out that the addressed situations can not be generally considered discriminatory or non-discriminatory. Whether or not discrimination occurred in a specific case, can only be established following an administrative procedure for discrimination investigation. Hence the Advocate informed the security company that they may file a complaint in the case of the so-called “lesbian club”, “cigar club”, if they so wish, as these are premises or services that are reserved for persons of a particular gender or sexual orientation, and the Advocate has not yet dealt with any similar case. Hence, the advisory procedure has been completed. (0702-242/2021)

Statements made in a television show in relation to the LGBT community

The Advocate was approached by a client who was concerned about the statements recorded for the promotion of the show “Intervju” broadcasted on RTV Slovenia and the statements in the aforementioned show. The main issue was related to harsh attitudes towards the LGBT community. The Advocate explained that such communications are being assessed in the context of freedom of expression, and noted that the latter also applies to information and ideas that can be offensive, shocking and disruptive. Additionally, the Advocate's position towards harassment and incitement to discrimination was also presented. The Advocate invited the client to supplement the letter with an explanation on how the contested records and declarations affected them to determine whether the objective and subjective signs of incitement to discriminate occurred. However, the Advocate did not receive any reply or a specific complaint. Hence, the advisory procedure has been completed. (0702-132/2021)

When a child is born in a same-sex partnership between two women, the mother's partner should also be recognized as the child's parent

The Advocate received a request from a law firm asking for advice regarding the automatic recognition of parenthood in relation to a child born in a same sex partnership of two women. In the case, the Advocate addressed a letter to the Ministry of the Interior in which the Advocate's view on the regulation of this area was presented. The Ministry of the Interior forwarded to the Advocate the opinion of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MLFSAEO), which shows that the provisions of the Marriage and Family Relations and the Family Code must be interpreted in a way that both partners are considered to be the parents of a child born in a partnership between two women.



This opinion of the Ministry of the Interior was sent to all administrative units to be used as a guide in their work. Upon registration of birth, the registrar must first check whether the parents of the child are in a valid marriage or partnership, and subsequently, in accordance with the results of the quiry, enter the information about the father or the other parent in the civil registry. If the results show that the mother of the child is in a same-sex partnership, the mother's partner must be entered as the other parent. The law firm informed the Advocate that the registration of the other parent was successful. Hence, the advisory procedure has been completed. (0702-15/2019)

Discrediting of journalists on social media based on personal grounds

The Advocate received a letter in which the client pointed to the discrediting of journalists on social networks based on their personal grounds, namely ethnicity and sexual orientation. The Advocate explained how the client can submit complaint and how to proceed in the case of an anonymous proposal. Additionally, the requirements of the burden of allegation were highlighted. The Advocate also underlined the elements of harassment under Article 8 of the PADA, which the client must demonstrate within the procedure. The Advocate also drew the attention of the client to the fact that since discrimination in this case concerns a specific person, the complaint must be submitted by either that person or another person, whereby, according to Article 34 of the PADA, the Advocate must obtain the consent of the person suffering discrimination in order to conduct the procedure. The client, in this case the specific journalist being subject to the discrediting, did not submit the complaint. Hence, the advisory procedure has been completed. (0702-231/2021)

1.8.2 Discrimination investigation in relation to the personal ground of sexual orientation, gender identity and gender expression

In the process of discrimination investigation in relation to the personal ground of gender identity, this particular personal ground was not demonstrated

The Advocate received a complaint regarding alleged discrimination against a transgender woman who alleged discrimination in the workplace based on her gender identity. The person underwent the procedure of transition and legal gender recognition, of which she informed her superior and asked him to address her with female pronouns and a female name in the future. Nevertheless, the superior allegedly continued to address her as a man and disclosed information about her transition to other employees. Since she was working on contractual basis, she was later replaced and invited to sign a resignation statement. In order for the Advocate to either confirm or disprove the allegations of discrimination or harassment as a form of discrimination under the first paragraph of Article 8 of the PADA, which defines harassment, in the specific matter, relevant data would have been needed to specify the allegedly contentious, discriminatory conduct in time and content to such an extent that would enable an appropriate assessment. As the Applicant did not complete or properly specify her allegations despite repeated calls, and therefore failed to fulfil her burden of allegation (which is a prerequisite for passing the burden of proof on the alleged violator), the Advocate rejected the complaint in the specific case. The decision has become final. (Decision No. 0700-61/2019/16 of 26 March 2021)

Permanent exclusion of all men who have had sex with men from blood donation is discriminatory

In the process of discrimination investigation, the Advocate of the Principle of Equality has decided that the permanent ban on blood donation, which applies to all men who have had sex with men, is discriminatory. Although HIV and other blood-borne viruses are also transmitted in heterosexual sexual relations, blood donation is only prohibited in advance and permanently to homosexual and bisexual men. These persons are excluded from participating in this important humanitarian activity, although the safety of donors is also ensured by testing the blood donated for the presence of viruses. The Advocate initially considered that the objective of the ban on blood donation was legitimate, as the recipients should be provided with healthy blood. However, the Advocate also took the view that an automatic and permanent ban on blood donation for all men who have had sex with men was not a completely appropriate, nor the only possible and proportionate measure to achieve the set objective. The Advocate thus concluded that a permanent ban on blood donations applicable to all men who have had sex with men is discriminatory. The Ministry of Health and the Blood Transfusion Centre of Slovenia are responsible for the discrimination, which was already pointed out by the Ombudsman in 2018 as a potential inadequacy of the current regulation. In line with the clarifications by the Blood Transfusion Centre of Slovenia, received by the Advocate during the discrimination procedure, only temporary bans on blood donation should be imposed in Slovenia as of 2022, and the choice of blood donors will depend on the risk of their sexual behaviour, regardless of their gender or sexual orientation. As of 31 December 2021, the decision was still not final. (Decision No. [0700-41/2020/15](#) of 3 December 2021)

1.8.3 Assessing the discriminativeness of regulations with regard to the personal grounds of sexual orientation, gender identity and gender expression

According to the Advocate, the regulations governing access to procedures of biomedically-assisted procreation are discriminatory against infertile women who are not in a marriage or extramarital union

The Advocate considered that the legislation governing access to procedures of biomedically-assisted procreation (assisted reproductive technology, ART) is discriminatory against infertile women who are not in a marriage or extramarital union. These women are denied access to assisted procreation only because they are single, divorced, widowed, or live in other types of partnerships or life communities, including same-sex partnerships. According to the Advocate's assessment, the less favourable treatment in the field of health care which is based on such personal grounds is unfounded and therefore unjustified. Hence the Advocate filed a request for constitutional review of those parts of regulations governing access to the ART procedures. Pursuant to Article 14 of the Constitution, human rights are guaranteed to everyone, regardless of their personal grounds, while Article 55 of the Constitution guarantees everyone the freedom to decide on the birth of children. The proceedings before the Constitutional Court are still pending. ([050-1/2017/24](#))



1.8.4 The Advocate's recommendations regarding the personal grounds of sexual orientation, gender identity and gender expression

Recommendation on strengthening the awareness-raising activities among healthcare professionals on transgenerness

The Advocate recommended that the Interdisciplinary Council on Gender Identity Confirmation should intensify its activities in the field of informing health personnel about the issues of transgender people, inviting where appropriate experts from other professions and NGOs. [\(0709-14/2021/268\)](#)

Recommendation status: ● Pending.

Recommendation on the appointment of alternate members for all specialists of the interdisciplinary council

The Advocate recommended that by appointing alternate members, the University Psychiatric Clinic Ljubljana should ensure the smooth operation of the Interdisciplinary Council for Gender Identity Confirmation in case of prolonged absences of its members. [\(0709-14/2021/288\)](#)

Recommendation status: ● Pending.

Recommendation on improving the medical procedures for transgender people of transgender people

The Advocate recommended that the Ministry of Health should provide funds for the establishment of a national focal point; establish a working group with a view to prepare national guidelines on procedures of medical gender identity confirmation; provide transgender patients with sexual dysphoria a comparable access to specialists and provide healthcare professionals with education and training on the appropriate treatment of transgender persons. [\(0709-14/2021/265\)](#)

Recommendation status: ● Pending.

Recommendation on the implementation of the 11th revision of the International Classification of Diseases (ICD-11)

The Advocate recommended that the NIPH should implement the 11th revision of the International Classification of Diseases ICD-11 as soon as possible. [\(0709-14/2021/266\)](#)

Recommendation status: ● Pending.

Recommendation on maintaining the same level of medical services coverage for transgender people after the implementation of ICD-11

The Advocate recommended that at the time of adopting the 11th revision of the International Classification of Diseases ICD-11, the HIIS should ensure at least the same level of coverage of the costs of medical interventions for patients in procedures of medical confirmation of gender identity as previously received. (0709-14/2021/267)

Recommendation status: ● Pending.

Recommendation on the drafting of a comprehensive act on the legal gender recognition

The Advocate recommended that the MLFSAEO should draft a comprehensive act on legal gender recognition containing, inter alia, a sensible regulation of the administrative procedure of legal gender recognition in such a way that self-determination of a person in the context of a single procedure before administrative units would suffice and in such a way as to allow for the entry of a third, neutral gender labelling option for transgender and intersex people. (0709-14/2021/284)

Recommendation status: ● Pending.

Recommendation of the abolition of local jurisdiction to change gender data; abolition of fee when changing the registered civil status record

The Advocate recommended that the Ministry of the Interior should abolish local jurisdiction in procedures for legal gender recognition and ensure that the change of the already vital event is free and uniform across all administrative units. (0709-14/2021/285)

Recommendation status: ● Pending.

Recommendation on the training of employees of administrative unit regarding the appropriate treatment of transgender persons

The Advocate recommended that the MPA should provide training to public officials working in administrative units on the appropriate treatment of transgender persons. (0709-14/2021/286)

Recommendation status: ● Pending.

Recommendation of the Draft Act Amending the Protection of Public Order Act

The Advocate supported the solutions introduced in the Draft Act, which fully follow the Advocate's two recommendations made to the drafts during the drafting period (see Recommendation No. 0070-6/2020/1 of 22 December 2020 and recommendation 0070-6/2020/6 of 12 March 2021). The recommendations related to compliance with the provisions of the Civil Union Act, limiting overnight stays in a public place and defining the offence in a way that would cover all personal ground with an open definition. It was recommended that the National Assembly should adopt the proposed solutions. (0070-6/2020/16)

Recommendation status: ● Taken into account.



1.8.5 The Advocate's educational and awareness-raising activities with regard to the personal grounds of sexual orientation, gender identity and gender expression

Third educational event on sexual medicine and sexology

On 16 December, the representatives of the Advocate attended an online educational event entitled Third education on sexual medicine and sexology at the University Psychiatric Clinic Ljubljana, organised by the latter. The Head of the Advocate presented the role and function of the Advocate in society, the Head of the Department for Discrimination Investigation in Advocacy explained the Advocate's advisory activities and the procedure for discrimination investigation, the Head of the Department for Monitoring, Awareness Raising and Preventive Activities presented the method of preparing the Advocate's special report on the situation of transgender people in medical and administrative procedures and the key findings from this Advocate's special report.

1.8.6 The Advocate's cooperation with civil society with regard to the personal grounds of sexual orientation, gender identity and gender expression

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.

Written cooperation pertaining to the situation of transgender people in medical gender identity confirmation procedures and legal gender recognition related to the issues faced by transgender people in such procedures and potential solutions, activities of NGOs in this regard and possible own studies and research in this field. The Advocate has included the responses in a special report on the situation of transgender people in medical procedures of gender identity confirmation and legal recognition of gender in Slovenia.³

Advocate at the presentation of the survey on the living situation of LGBTIQ+ people in Slovenia

On 1 October, the Advocate responded to the invitation and met with representatives of the "Parada Ponosa" association, which presented the survey on the living situation of LGBTIQ+ people in Slovenia.⁴ Homelessness and housing exclusion of young LGBTIQ+ persons is reported to be a social problem, touching the primary family environments, school and health system, real estate market, non-governmental sector, state institutions as well as local, national and European strategies and policies. It is also heavily burdened with the discrimination and stigmatisation of LGBTIQ+ people. Ensuring safe, stable, accessible and adequate housing is a challenge that many young people face regardless of their other personal grounds. However, sexual orientation and gender identity are circumstances that represent additional risk factors for housing exclusion and homelessness.

³ Available at: <https://www.zagovornik.si/posebna-porocila/>

⁴ Available at: https://www.sqvot.si/wp-content/uploads/2021/06/Raziskovalno-porocilo_web.pdf

1.9 Social status

1.9.1 Advisory, informing and support activities related to the personal ground of social status

In 2021, the Advocate did not complete any advisory procedures dealing with discrimination in relation to the personal ground of social status.

1.9.2 Discrimination investigation in relation to the personal ground of social status

In 2021, the Advocate did not issue any decision dealing with discrimination investigation in relation to the personal ground of social status.

1.9.3 Assessments of discriminativeness of regulations with regard to the personal ground of social status

According to the Advocate, the long-term closure of schools during the covid-19 epidemic led to discrimination against children, vulnerable groups of children and parents, especially women

The Advocate of the Principle of Equality carried out an assessment of the discriminativeness of the regulations providing for distant education of pupils and students due to the epidemic which lasted for 47 weeks during the period from March 2020 until June 2021 inclusive (when schools were supposed to be open for 52 weeks). The Advocate estimated that the measure of school closure placed children at a disadvantage based on their age when compared to other comparable population groups, in the field of access to the constitutional right to education and schooling under Article 57 of the Constitution. It was also assessed that school closures had an especially negative effect on vulnerable groups of children and adolescents based on their financial status, disability, race or ethnic origin, nationality, citizenship, language, social status, and place of residence. Compared to other residents, the measures also disproportionately affected parents and guardians of school children, who were forced to get involved in the implementation of distance education, which applied especially to women. The Advocate recognised the assessed measure's goals as legitimate because the state wanted to protect and actually did protect people's health and lives. However, the Advocate did not find the means for achieving this goal – long-term school closure – as appropriate or suitable in this assessment, because schools did not represent a significant source of infections among children and adolescents.



The Advocate also did not find the critical need for long-term, complete school closures. According to the National Institute for Public Health (NIPH), school closures were not necessary for such a long period of time, and the government and the Ministry of Education, Science and Sport had different educational options or models to choose from. Instead, they used the most extreme model of complete closure of educational institutions, which affected the vast majority of pupils and students. The Advocate also did not consider long-term school closures to be proportionate because the weight of the consequences of distance learning on children and parents or guardians (particularly women) was not proportional to the benefits of this measure. The Advocate therefore recommended that the Government and the Ministry of Education should refrain from reintroducing school closures in the future. However, no response was received. The discriminatory assessment procedure has thus been completed. [\(050-15/2021/56\)](#)

1.9.4 The Advocate's recommendations regarding the personal ground of social status

Recommendation on improving the situation of homeless people

Homeless people are often discriminated against and subject to various forms of violence because of their social status. On the occasion of the World Homeless Day, the Advocate recommended that the MLFSAEO should take measures, including the adoption of the Resolution on the National Social Welfare Programme 2021–2030, to improve their situation and prevent homelessness. [\(0709-38/2020/43\)](#)

Status of recommendation: ● The Act is still in the process of adoption.

Recommendation aimed at the Draft Act Amending the Labour Market Regulation Act

The Advocate recommended that in the Draft Act, the MLFSAEO should explain the purposes and objectives of the proposed amendments to the legal provisions regarding the redefinition of suitable employment, extension of the public works period and changes regarding the handling of appeals against the decisions of the Employment Service, and support them with data and explain how the Ministry ensures the proportionality of the proposed measures. It was further recommended that the Draft Act be supplemented as to abolish the provision of the current act, which stipulates the condition of the knowledge of the Slovenian language for foreigners, as it distinguishes between registered unemployed persons on the basis of (a personal ground of) citizenship, and indirectly on the basis of other personal grounds. [\(0709-29/2021/1\)](#)

Status of recommendation: ● The legislative process is still ongoing.

Recommendation of the Draft Act Amending the Protection of Public Order Act

In the recommendation, the Advocate welcomed the fact that the Ministry of the Interior had taken into account the proposals made by the Advocate regarding the first Draft amending the Act, which referred to the offence of incitement to intolerance. As regards the new Draft, the Advocate recommended that the Ministry should take into account the provisions of the Civil Union Act when formulating the provisions governing the offence of violent and daring behaviour, committed between persons in a family relationship or another relationship. It also recommended that the legislator should consider setting the legal conditions under which local self-governing communities may, by means of their own regulations, designate areas or facilities where overnight stays in a public place are prohibited. (0070-6/2020/6)
Status of recommendation: ● Taken into account in the Draft Act.

Recommendation of the Draft Act Amending the Protection of Public Order Act

The Advocate supported the solutions introduced in the Draft Act, which fully follow the Advocate's two recommendations made to the drafts during the drafting period (see Recommendation No. 0070-6/2020/1 of 22 December 2020 and recommendation 0070-6/2020/6 of 12 March 2021). The recommendations related to compliance with the provisions of the Civil Union Act, limiting overnight stays in a public place and defining the offence in a way that would cover all personal ground with an open definition. It was recommended that the National Assembly should adopt the proposed solutions. (0070-6/2020/16)
Status of recommendation: ● Taken into account.

1.9.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of social status

In 2021, the Advocate placed a particular emphasis on bringing to light the situation of individual vulnerable groups during the covid-19 spread with the help of the media and publications on social networks. In various ways, the Advocate justified the necessity of adapting the anti-covid measures to the principle that no one should be left behind.



1.9.6 The Advocate's cooperation with civil society with regard to the personal ground of social status

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.

The cooperation in writing covering the situation of the homeless concerned questions on the number of homeless people, the key reasons for homelessness, implementation of preventive and supportive programmes, implementation of specific activities and measures during the covid-19 epidemic, ways and scope of financing programmes for the homeless and obstacles and challenges in preventing homelessness. The Advocate included the analysis of the responses received in the framework of the written cooperation in the recommendation on the improvement of the situation of the homeless.⁵

5 Available at: www.zagovornik.si/priporocila-2021-2/

1.10 Property status

1.10.1 Advisory, informing and support activities related to the personal ground of property status

The situation of beneficiaries of the compulsory health insurance and supplementary voluntary health insurance is not mutually comparable

The Advocate received a complaint regarding the allegedly controversial arrangements for the triage of referrals in the health system. The individual pointed out that such an approach was discriminatory, as triage can change the urgency level of the referral to less urgent (e.g. from very fast to fast) and as a result, the individual waits for the service for a longer time, while in the case of a supplementary insurance concluded with one of the insurance companies, the individual gets through faster, although such an individual may at the beginning have a referral with the regular level of urgency. The applicant identified such a system as discriminatory, as it allows some to get through without waiting, while others who cannot afford the supplementary insurance are not entitled to skip the waiting list in such a way. The Advocate explained to the client that the issue brought up cannot be considered or assessed from the perspective of the PADA as the situations highlighted are not comparable. The compulsory health insurance and supplementary or above-standard health insurance have to be distinguished. In accordance with the Constitution, the state is obliged to establish a health system, ensure its functioning and provide citizens with access to health services. Within the public health system, the State implements its constitutional commitments (including through the compulsory health insurance). In contrast to the compulsory health insurance, supplementary voluntary health insurance is not about fulfilling the obligations of the State in relation to the exercise of the constitutional rights to social security and health care (Article 50, 51 of the Constitution), but about providing additional opportunities or access to services of a higher standard or additional rights that exceed the scope of rights provided within the public health system. The described triage system cannot be considered as discriminatory on the grounds of property status. The advisory procedure has thus been completed. (0702-158/2021)



Disadvantaged situation of children who do not have equipment for distance education due to their poor property status

The Advocate was approached by a mother, who received a notice from the school that only recovered or vaccinated students can attend classes as one of the classmates was infected. She considered the measure to be discriminatory against unvaccinated students who are taking tests, as they are proving with a negative test that they come to school healthy (which is not true for recovered and vaccinated students). The Advocate presented to the client the arrangements applicable to educational institutions regarding the reaction to a confirmed case of covid-19 infection. Accordingly, a pupil or a student who is exposed to a high-risk physical contact and does not fall under any of the exceptions (neither recovered nor vaccinated) must be subject to home quarantine. The Advocate explained to the client that the equality body is not competent to regulate this area. However, the problem of families who, due to their poor property status, cannot provide their children with the necessary equipment for distance education, was highlighted. In such cases, discrimination on the grounds of property status may occur. The client did not respond to the Advocate's clarification. The advisory procedure has thus been completed. [\(0702-212/2021\)](#)

Charging printed invoices can have a discriminatory effect

The Advocate was contacted by an individual regarding the charging of classical paper invoices. In addition to the bill, users received a call from the service provider, to sign up for an e-invoice, otherwise they will be charged additional costs. The Advocate explained to the client that while the company has a legitimate interest in establishing e-commerce, equal access to services must be granted to all individuals regardless of their personal grounds. The possibility was mentioned that in the specific case indirect discrimination might have occurred on the grounds of property status (as not everyone has access to the Internet and to a computer or other appropriate electronic devices and thus e-mail), age (elderly are often computer illiterate, do not have access to the Internet and to a computer or other appropriate electronic devices and thus e-mail) or disability (some do not have the ability to use the Internet, computer or other appropriate electronic devices and thus e-mail due to movement, sensory or psychosocial disabilities). The client was encouraged to submit a complaint, informed about the possibility of initiating the procedure ex officio and asked some additional questions. The client did not choose to initiate the discrimination investigation procedure. The advisory procedure has thus been completed. [\(0702-18/2021\)](#)

Having or not having a bank debit card or a bank account cannot be considered as the personal ground of property status

The Advocate received a letter from an individual who complained that the payment for a covid-19 test at the health centre, which is one of the covid pass conditions for access to a number of services, can only be made using a bank debit card. She explained that she has no funds on her bank debit card, but she has cash. Because she is unable to perform the payment, she feels discriminated against. She asked the Advocate whether such arrangement represents discrimination against persons who do not have a bank account or a bank debit card. The Advocate explained to the client that according to the regulations, providers of goods and services are not obliged to enable both payment methods, i.e. by card and by cash. Having or not having a bank debit card or a bank account cannot be understood as a personal ground within the meaning of the provisions of the PADA. It is namely a matter of individual choice, as bank accounts are generally accessible. In addition, each bank is obliged to open a basic payment account, if a consumer requests so. Banks may however refuse to open a basic account only in certain statutory exceptional cases. The concept of a basic payment account was established under Directive 2014/92/EU, which aims to provide consumers with access to a bank account irrespective of their financial situation. A low balance on the account or a non-functioning card could be a result of a personal ground of the individual's property status in the event that the individual has debts due to that personal ground and the funds from the bank account are automatically withdrawn for their repayment, which is why the individual prefers to operate with cash. However, the Advocate pointed out that an individual may have debts for various reasons. From the above, it cannot be automatically concluded that discrimination stems from the personal ground property status. The advisory procedure has thus been completed. (0702-174/2021)

1.10.2 Discrimination investigation in relation to the personal ground of property status

In 2021, the Advocate did not issue any decision dealing with discrimination investigation in relation to the personal ground of property status.



1.10.3 Assessments of discriminativeness of regulations with regard to the personal ground of property status

According to the Advocate's assessment, humanitarian warehouses must be accessible without the condition of DCP

The Advocate received a request for the assessment of discriminativeness of the Ordinance 146/2021 provisionally providing for, among other things, the covid pass condition for persons carrying out work for operators and for persons who are users of the services or are involved in the performance of the activities. The Ordinance 146/2021 entered into force on 15 September 2021. The Ordinance stipulated that the restrictions do not apply in cases of “emergency supply of basic livelihoods and necessities, provision of law and order, security and defence, emergency medical assistance and protection and rescue”. According to the Ordinance, the following were exclusively considered to ensure the supply of basic livelihoods and necessities: stores selling predominantly food and beverages, including the sale of food and beverages outside of stores, with the exception of stores inside a shopping centre; and specialised stores selling pharmaceutical, medical, cosmetic and toilet articles, with the exception of stores inside shopping centres. The Advocate noted that the Ordinance excludes the poorest groups of the population who are supplied with basic necessities in humanitarian warehouses, food distribution centres and other places that provide free access to basic necessities for socially disadvantaged groups. The Advocate noted that the absence of such an exception in Ordinance 146/2021 indicated a potentially unequal treatment of the poorest population groups. The Advocate recommended that the Government should include humanitarian warehouses, food distribution centres and other places that provide free access to basic necessities to socially disadvantaged groups in the emergency supply of basic livelihoods and necessities. The recommendation was followed. The discriminatory assessment procedure has thus been completed. (050-31/2021/2)

The certificate of vaccination, recovery or PCR test (covid pass) as a condition for crossing the borders of statistical regions does not represent discrimination

On 5 April 2021, the Advocate received a complaint which alleged that the Ordinance on the temporary restriction of movement of people and on the prohibition of gathering of people to prevent the spread of covid-19 was discriminatory. Crossing the borders of statistical regions in the country was only made possible upon compliance with the conditions of vaccination, recovery or a negative PCR test. The complainant alleged discrimination as not all inhabitants were ensured access to the vaccine when the Ordinance was in force, only few recovered from covid-19 and the rest were discriminated against on the basis of their property status in relation to the price of the PCR test, which ranged between EUR 60 and EUR 120 per test. The Advocate established that on 12 April 2021, a new Ordinance on the temporary restriction of movement of people and on the prohibition of gathering of people to prevent the spread of covid-19 entered into force, which contained a substantially similar provision. However, the prohibition on crossing the borders of statistical regions was removed by a decision made at the 71st regular meeting of the Government of the Republic of Slovenia. The previous restriction on cross-regional movements was removed by the Ordinance on the temporary prohibition of gathering of people to prevent the spread of covid-19, which no longer contained such a restriction. Consequently, the Advocate did not carry out the discriminatory assessment procedure of the previously applicable Ordinance. The discriminatory assessment procedure has thus been completed. (050-19/2021/3)

1.10.4 The Advocate's recommendations regarding the personal ground of property status

Recommendation on the Draft Act Amending the Social Assistance Payments Act (SAPA) and regarding the Draft Act Amending the Exercise of Rights from Public Funds Act (ERPFA)

The Advocate recommended that the National Assembly should adopt a solution in the SAPA proposal, according to which the current evidence for access to social assistance, by which the maintenance creditor proves the non-receipt of maintenance in the exercise of this right, would be expanded by adding the possibility of evidence in the form of a decision on the recognition of maintenance compensation. And in regards to the ERPFA proposal it was recommended that other documents showing that the individual does not receive the financial resources or receives only an amount lower than provided by the enforceable legal title be included among possible evidence. (0070-16/2021/1)

Recommendation status: ● Not taken into account.

Recommendation on improving the situation of homeless people

Homeless people are often discriminated and subject to various forms of violence because of their social status. On the occasion of the World Homeless Day, the Advocate recommended that the MLFSAEO should take measures, including the adoption of the Resolution on the National Social Welfare Programme 2021–2030, to improve their situation and prevent homelessness. (0709-38/2020/43)

Recommendation status: ● The Act is still in the process of adoption.

Recommendation aimed at the Draft Act Amending the Housing Act

The Advocate recommended that the National Assembly should ensure that the harmonisation (of the increase) of the rent subsidy be adjusted to the planned increase of non-profit rent and adopt a new provision that would explicitly prohibit discrimination in real estate advertising and on the real estate market. It was also recommended that the circle of beneficiaries of non-profit rental housing be extended in line with the Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents and that the law justifies the tender criteria for the selection of tenants of public rental housing (as a specific measure to ensure equality under the PADA). (0709-62/2020/2)

Recommendation status: ● Not taken into account.

Recommendation on the emergency supply of basic livelihoods and necessities

The Advocate recommended to the Government that the Ordinance on the method of meeting the condition of morbidity, vaccination and testing to curb the spread of SARS-CoV-2 virus infections, adopted by the Government on 11 September 2021, be supplemented and humanitarian warehouses, food distribution centres and other places that allow free access to basic livelihoods to socially vulnerable groups be included among places of emergency supply provision. (050-31/2021/2)

Recommendation status: ● Taken into account by amending the Ordinance.



1.10.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of property status

In 2021, the Advocate placed a particular emphasis on bringing to light the situation of individual vulnerable groups during the covid-19 spread with the help of the media and publications on social networks. In various ways, the Advocate justified the necessity of adapting the anti-covid measures to the principle that no one should be left behind.

1.10.6 The Advocate's cooperation with civil society with regard to the personal ground of property status

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.

The cooperation in writing covering the situation of the homeless concerned questions on the number of homeless people, the key reasons for homelessness, implementation of preventive and supportive programmes, implementation of specific activities and measures during the covid-19 epidemic, ways and scope of financing programmes for the homeless and obstacles and challenges in preventing homelessness. The Advocate included the analysis of the responses received in the framework of the written cooperation in the recommendation on the improvement of the situation of the homeless.⁶

6 Available at: www.zagovornik.si/priporocila-2021-2/

1.11 Education

THE ADVOCATE HIGHLIGHTS

Article 57 of the Constitution of the Republic of Slovenia
(Education and Schooling)

Freedom of education shall be guaranteed.

Primary education is compulsory and shall be financed from public funds.

The state shall create the opportunities for citizens to obtain a proper education.

1.11.1 Advisory, informing and support activities related to the personal ground of education

The assessment of the level of education required for the exercise of a particular profession falls within the scope of the legislator's discretion

The Advocate received the question regarding the compliance with the principle of equality, namely with regard to the arrangement according to which legal practitioners who passed the pedagogical examination cannot teach the subject of civic culture and ethics in primary schools, while theologians and political scientists have the opportunity to do so. Following the analysis, the Advocate established that the teaching profession in the Republic of Slovenia is regulated, which means that the conditions for performing such work are determined by the law or relevant regulations. The assessment of the level of education required for the exercise of a particular profession falls within the scope of the legislator's discretion. The advisory procedure has thus been completed. [\(0702-32/2021\)](#)

Inconsistent practice of whether the university study programme of ethnology and cultural anthropology enables obtaining a sociological degree

The Advocate was approached by a client alleging violation of the principle of equality regarding the participation in the social security exam. The Social Chamber of Slovenia and later the MESS rejected her application as unfounded, as the client does not have adequate education. She is an ethnologist and cultural anthropologist. The client provided an example of another person who was able to take the exam in 2016 with the same education. The Advocate noted that the legislator limited the participation in the professional exam to certain fields of education. Since the client had already filed an action before the Administrative Court, the Advocate explained that the equality body cannot interfere with proceedings before other competent authorities. Additionally, the Advocate advised the client to use the argument of the principle of equality in the court proceedings, as after receiving a response from the Social Chamber of Slovenia, it was found that the practice of defining the study of ethnology and cultural anthropology is not uniform. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. [\(0702-133/2020/2\)](#)



Advisory to a young doctor who was denied the title of MD by the Ministry of Health and the Medical Chamber

The Advocate was approached by an individual who graduated from the Faculty of Medicine in another Member State of the European Union and obtained the title of Doctor of Medicine. Together with several colleagues who also studied abroad, he submitted an application for recognition of a professional qualification. The Ministry of Health issued a decision on the recognition of a professional qualification after the adaptation condition was met. After passing the specialist exam in Slovenia, he found that his professional qualification recognised by the decision was doctor, but he was not granted the title of MD. He stated that not all colleagues from the same university experienced the same problems. With regard to its competences, the Advocate pointed out that the key question is whether the non-recognition of the title was based on the personal grounds of the client. The client referred to education as his personal ground. With regard to the indication of the client, the Advocate pointed out that the client needs to be compared with other students who have also completed their medical studies in another Member State of the European Union, as this puts them in a comparable position. The Advocate found that the nature and level of education were the same for the client and for them. Hence, education does not appear to be the personal ground that puts the client in a less favourable situation compared to other colleagues with the same medical education obtained abroad. The Advocate additionally noted that in the case of comparison with students who completed their studies at the Faculty of Medicine in the Republic of Slovenia, the comparability of the situations is questionable. Individuals who have completed their medical studies at the Faculty of Medicine in the Republic of Slovenia do not need to obtain a decision on the recognition of professional qualifications. Hence, the Advocate advised the client to use other existing remedies. He proposed to the client to address a request for a supplementary decision to the Ministry of Health. In the event of refusal or silence of the authority, the client shall have the opportunity to lodge an appeal and later to initiate an administrative dispute. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. [\(0702-225/2021\)](#)

1.11.2 Discrimination investigation in relation to the personal ground of education

Refusal to enroll in the second year of the second cycle does not constitute discrimination

The Advocate received a complaint from a student, who had already completed his second cycle degree and wished to enroll in the second cycle in another field of study at the same faculty. The University did not grant the request. As a result, the complainant alleged discriminatory treatment on the grounds of education. He compared his situation with graduates of the four-year undergraduate degree, who were allowed to enroll directly in the second year. In this case, the Advocate found that the complainant was not in a comparable situation with the graduates of the four-year undergraduate degree, as they had not obtained a master's degree upon completion of their studies, while the applicant has. Enrolment directly in the second year of the second cycle degree only enables them to obtain a master's degree, which the complainant has already obtained. As a result, the Advocate did not find discrimination on the grounds of education. The decision has become final. (Decision No. [0700-2/2020/21](#) of 31 August 2020)

1.11.3 Assessments of discriminativeness of regulations with regard to the personal ground of education

The prescribed standards of education for professional heads of driving schools do not constitute discrimination

The Advocate received a complaint which brought up the consequences of the Drivers Act of 15 December 2016 for independent entrepreneurs who perform the activity of a driving school. The complainant argued that the law discriminates smaller driving schools which cannot fulfil the new conditions. The Advocate informed the complainant that, in accordance with its competences the equality body can only consider conditions related to personal ground, in this case the personal ground in education for professional heads of driving schools set by the disputed Act. Following the procedure, the Advocate assessed that the required level of education as a condition for obtaining the licence for a professional head of driving school is not discriminatory, as according to the Advocate, the differential treatment pursues a legitimate objective and the means of achieving this objective are adequate, necessary and proportionate. The discriminatory assessment procedure has thus been completed. **(050-3/2018/3)**

According to the Advocate's assessment, required qualifications for a particular position do not represent discrimination

The Advocate received a complaint in relation to Article 14 of the Public Sector Salary System Act (PSSSA). This Article stipulates that a civil servant who performs work at a workplace with a lower education than required shall be entitled to a basic salary which is one or two salary classes lower than the basic salary at the workplace. The complainant stated that a civil servant must receive equal pay for the same work and that education which does not deviate by more than one level for work performed with good quality for several years should not be a criterion for lower pay. The complainant considered Article 14 of the PSSSA to be unconstitutional and asked the Advocate to address the case. The Advocate noted that civil servants who meet the required level of education and those who fail to meet the required educational level and work at the same workplace are not in a comparable situation as the first group fulfils the conditions for performing the work while the second group does not. The employees from the first group have adequate qualifications for the job as they fulfil the condition of (formal) education, while employees from the second group do not. Education is the reason for the incomparability of the compared situations in this particular case. Since the reason for the incomparability of situations is also one of the personal grounds under the PADA (i.e. education), the Advocate further assessed whether the distinction of civil servants on the grounds of education is consistent with the principle of proportionality. The Advocate assessed that reducing the basic salary does not represent discrimination, as such differential treatment is based on a legitimate objective and the means of achieving this objective are adequate, necessary and proportionate. The discriminatory assessment procedure has thus been completed. **(050-34/2021/4)**



The date when the salary promotion in the public sector is taken into account is not discriminatory

The Advocate received a complaint to consider the Act Amending the Public Sector Salary System Act (PSSSA) from the perspective of potential discriminativeness and unconstitutionality. Paragraph 4 of Article 16 of the PSSSA, which stipulates that a civil servant or official who advances to a higher salary class or title or obtains a higher title shall acquire the right to a salary in accordance with the higher salary class or title or the obtained higher title on 1 December of the year in which he was promoted, was disputed. According to the complainant, this represents a delay in payment provided by the promotion which was obtained on 1 April of the current year, while payment is not due until December of the current year. The Advocate found that the first element of discrimination — that is a personal ground within the meaning of the PADA — was not given. In terms of promotion, civil servants have a different position from public sector employees and therefore the two groups are not in comparable situations. However, the provision applies equally to all civil servants, so the disputed Article creates no discrimination between them. As a result, the Advocate assessed that the provision does not constitute discrimination. The discriminatory assessment procedure has thus been completed. (050-28/2021/2)

1.11.4 The Advocate's recommendations regarding the personal ground of education

In 2021, the Advocate did not issue any recommendations regarding the personal grounds of education.

1.11.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of education

In 2021, the Advocate placed a particular emphasis on bringing to light the situation of individual vulnerable groups during the covid-19 spread with the help of the media and publications on social networks. In various ways, the Advocate justified the necessity of adapting the anti-covid measures to the principle that no one should be left behind.

1.11.6 The Advocate's cooperation with civil society with regard to the personal ground of education

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.

The cooperation in writing regarding the challenges faced by the deaf in the field of education was related to questions on the perceived problems of the deaf in the field of primary, secondary and higher education, the reasons for poor education attainment of the deaf, examples of good practices to improve the education of the deaf and the impact of the covid-19 epidemic on the education of the deaf. The Advocate included the analysis of written responses received within the cooperation in a special report on the situation of the deaf in the education system.⁷

⁷ Available at: <https://www.zagovornik.si/posebna-porocila/>



1.12 Health status

THE ADVOCATE HIGHLIGHTS

Article 51 of the Constitution of the Republic of Slovenia (Right to Health Care)

Everyone has the right to health care under conditions provided by law.
The rights to health care from public funds shall be provided by law.
No one may be compelled to undergo medical treatment except in cases provided by law.

1.12.1 Advisory, informing and support activities related to the personal ground of health status

Taking into account attendance at work in determining the amount of the extra allowance for increased workload may constitute indirect discrimination against workers on the basis of their health status

The Advocate received a letter from an individual whose director makes the amount of the extra allowance for increased workload conditional upon attendance at work. Sick leave or absence of a worker due to annual leave reduces the allowance. The client addressed a question to the Advocate, whether making the amount of the extra allowance conditional upon attendance at work represents indirect discrimination of workers who were taking their annual leave or were on sick leave. The Advocate explained that taking annual leave is not a personal ground according to the PADA, hence, in this case, discrimination cannot be discussed. The period of sick leave due to one's medical condition or due to the medical condition of the person for whom the allegedly discriminated person is caring for is not a matter of choice, but a circumstance beyond the individual's control. In these cases, the Advocate identified a personal ground as the reason for the absence, namely health status, or parenting. For this reason, the Advocate advised the client on their legal options and called on them to lodge a complaint with the equality body. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. **(0702-146/2020)**

Taking into account attendance at work in determining the amount of the company performance reward or Christmas bonus may constitute indirect discrimination against workers on the basis of their health status

In 2021, the Advocate also received questions from employees regarding the determination of the amount of company performance. In the subject cases, the employer paid the Christmas bonus, which however is not mandatory under law, in different amounts calculated according to workplace attendance. One of the clients stated that she was employed for indefinite duration and was now on sick leave for three years, hence she did not receive any Christmas bonus during those three years. In the clarification, the Advocate highlighted the judgement of the Administrative Court of the Republic of Slovenia I U 29/2020-21, which confirmed the Advocate's decision that discrimination on the grounds of health status is given in such a case. The Advocate advised the client that if her employer determines eligibility and calculates the amount of company performance bonus or Christmas bonus in the same way, she should inform the Human Resources Department or the management about the Advocate's decision and the decision of the Administrative Court and propose a non-discriminatory method of company performance calculation. She is also welcome to lodge a complaint with the Advocate. Another client stated in a request for advice that the decision of the Advocate and the fear of inspection had led to the employer's decision to abolish Christmas bonuses or decrease the amount to a minimum level, as everyone is entitled to the same amount. In addition to the aforementioned judgement, the Advocate presented the concept of company performance to the client. An employer is obliged to pay company performance bonus if so agreed by a collective agreement or employment contract, while complying with the provisions of the ERA-1 and PADA in such a way that none of the employees are disadvantaged in relation to their personal grounds. The clients failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. (0702-179/2020, 0702-235/2021)

The impact of prolonged sick leave on the employee's annual assessment is potentially discriminatory

The Advocate received a letter from a client who, due to sick leave and part-time work in response to their health status, was assessed by the former employer with a score of 3. The head of the unit preparing the assessment told her that she would otherwise rate her with a score of 4, but due to her long-term absence for health reasons and because particular adjustments were made when she arrived back at the workplace, her superiors rated her with 3. The client was therefore interested to find out whether a longer sick leave could affect the employee's annual assessment. The Advocate explained to the client that the question of whether absence from work can affect the assessment of a civil servant has already been answered. Given that the case concerned a civil servant, the Advocate explained to the client that the case falls within the competence of MPA. This area is regulated by the Public Sector Salary System Act (PSSSA). The Advocate presented the relevant legal framework and options for action to the client. If a civil servant was assessed and is aware of the assessment, but does not agree with it, the time period for submitting a request for examination of the assessment before a Commission begins to run.



The Advocate suggested that the client should address the question of whether a remedy against the partial assessment of a former employer is available. The Advocate assessed in a merely non-binding manner that the individual has a remedy only against the assessment that she will receive next year by 15 March for 2021 from the new employer and that only in this context, if the assessment of the former employer would affect the final assessment, she would be able to raise an objection that, as an unjustified criterion for the assessment, the sick leave of the client was taken into account. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. **(0702-244/2021)**

The issue of professional adequacy of care provided at a nursing home does not constitute discrimination

The Advocate received a letter from the son of a nursing home (NH) resident, who was placed in the so-called grey zone due to covid-19 infection. This meant that she was not allowed to leave her room, and the staff approached her using personal protective equipment. The individual argued that in the grey zone, the resident did not receive adequate care, so the Advocate addressed a query to the NH. Based on the responses of the NH, the Advocate explained to the individual that, based on the data received, in the resident's case elements of discrimination were not found. The resident was not subject to disadvantaged treatment due to her personal ground, but according to the complainant, the professionalism of the treatment as such was questionable. The Advocate advised the client to report the case to the social inspection or health inspection of the Republic of Slovenia if he considers that the professionalism of the staff of a specific NH was questionable. In addition, the Advocate advised the client to cooperate in a constructive manner in communication with the management and staff of the NH for the benefit of the resident. The advisory procedure has thus been completed. **(0702-181/2020)**

Options available to an individual with Apert syndrome to cover the cost of regular therapies after finishing school

The Advocate received a letter from an individual who, due to a specific genetic disease, needs regular weekly therapy, which is associated with high costs. He addressed the Advocate with the question of why the costs of the therapies were covered by the State until the moment he finished school but not anymore later on. The Advocate explained to the client that the reason is the provision of Article 23 of the Health Care and Health Insurance Act. The Advocate obtained additional information from the Health Insurance Institute of Slovenia. With regard to the response of the Institute, the Advocate advised the individual to contact his personal physician who can officially refer him to the necessary medical services including thermal cures and physiotherapeutic treatments based on his own assessment or the assessment of a specialist in accordance with the Health Care and Health Insurance Act and the Rules on Compulsory Health Insurance. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. **(0702-25/2021)**

Whether a particular health centre fulfils the conditions for performing certain health procedures is not a question of discrimination

The Advocate was contacted by an individual regarding the suspension of the concession or permit to perform certain medical procedures, more specifically procedures within the assisted reproduction programmes (ART). The question of whether a specific health centre fulfils the conditions for carrying out procedures related to the ART is not a question of discrimination, but a matter of fulfilling the statutory conditions ensuring the professionalism of the provider. Although infertility falls within the personal ground of health status, the review of the justification of the failure to prolong or suspension of the concession or permit to perform particular procedures is not within the Advocate's competence, unless one complains that the reason behind is related to discrimination. The advisory procedure has thus been completed. [\(0705-15/2021\)](#)

Possibility of covid-19-infected high school pupils to take the final exams in the autumn term with retroactive validity

The Advocate was approached by the mother of a high school senior who contracted covid-19, which is why she could not take the first part of her final exam in spring. She had the option of graduating in the autumn term, which caused a problem if the selected faculty failed to open the autumn registration dates, due to entrance examinations and occupation of student places. Entrance exams take place in July, and if the person who wants to enroll does not have a final exam diploma, they are excluded from the selection procedure. The Advocate drew the client's attention to the position of the National Examinations Centre that after submitting appropriate evidence, infected candidates will have the opportunity to graduate in the autumn term with the so-called retrospective validity. The client's attention was also drawn to the Decision on the implementation, terms and actions necessary for taking general and vocational final exams in the school year 2020/2021, containing more detailed provisions. On the basis of publicly available media reports, the Advocate found that the faculty for which the student intended to enroll responded and explained that a way would be found to enable the enrolment of persons who could not take the final exam due to the coronavirus infection, but the details of how it would be done were not evident from these reports. Hence, the Advocate asked the client for additional information on how the Faculty responded after its intervention. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. [\(0702-75/2021\)](#)



A doctor's certificate that a person cannot get vaccinated due to their medical condition is a condition for access to free testing

The Advocate was asked for help by an individual who described the situation of his very sick elderly mother. She was forced to take a test for every visit to the doctor and other matters, as she has been advised against vaccination. The Advocate suggested that the client obtain a certificate from a doctor for his mother confirming that she cannot get vaccinated due to her medical condition. That way, the testing will be free of charge for her. At the same time, the Advocate added that the question of whether the client's mother is one of the persons who cannot get vaccinated, due to their medical condition, is not within the Advocate's domain as the question falls within the scope of the medical profession. The client was also informed about the list of emergency health services that can be accessed without fulfilling the covid pass condition. The client did not respond to the Advocate's clarification. The advisory procedure has thus been completed. (0702-189/2021)

Advisory regarding the restriction of free movement based on the ordinances determining the conditions of entry into the Republic of Slovenia to contain and control the covid-19 infectious disease

During the third wave of the covid-19 epidemic, several individuals contacted the Advocate regarding the restriction of free movement and the provision of equal opportunities regarding their mobility. They pointed out that persons who recovered from covid-19 and those who had been vaccinated could also move across the border with no restrictions, while the rest were subject to the restriction of free movement. They considered such arrangements to be discriminatory on the basis of health status until the moment when vaccination is available to everyone. The Advocate explained to the clients that several complaints were received in relation to the Ordinance determining the conditions of entry into the Republic of Slovenia to contain and control the covid-19 infectious disease, which was in force from 29 March 2021 until 12 April 2021. The clients were informed that two procedures are pending regarding the right to leave the country and return back in connection with the Ordinance and that the Advocate of the Principle of Equality addressed a recommendation to the Government regarding the prohibition of exit from the country No. 050-18/2021/3 of 1 April 2021. The advisory procedures have thus been completed. (0702-62/2021)

1.12.2 Discrimination investigation in relation to the personal ground of health status

Christmas bonus linked to the employee's presence at workplace constitutes unacceptable discrimination on the grounds of health status

In 2021, the Advocate found discrimination in the payment of company performance bonus and Christmas bonus in several cases, when employers considered the absence from work due to health (sick leave) or parenting (maternity or paternity leave, leave for child care) as a criterion for the method of calculating Christmas bonus. In these cases, employers reduced the payment for those employees who were on sick leave or parental leave.

In some cases, the Advocate found either indirect or direct discrimination, depending on how the calculation criteria were formulated. If the criteria referred directly to sick leave or parental leave, direct discrimination was identified. If they criteria were seemingly neutral in relation to the personal grounds of the employee and related to the absence in general, an indirect form of discrimination was determined. The latter is given when a seemingly neutral criterion puts a person with a certain personal ground at a disadvantage, and at the same time such a method of calculation is not in accordance with the proportionality test, which the Advocate examines in each case individually. In such cases, therefore, the criteria applied to all employees equally, but they put particular employees at disadvantage due to their personal grounds of health status, parenthood, pregnancy and also gender (because only women get pregnant and paternity leave can only be used by men). In the case of two issued decisions, the violator filed a lawsuit with the Administrative Court of the Republic of Slovenia, the proceedings are still pending. In one case, the Advocate issued a decision on the suspension of the procedure of discrimination investigation in the payment of company performance bonus, as neither the complainant nor the alleged violator enclosed evidence for their allegations. (Decisions No. **0700-14/2020/7** of 22 February 2021, **0700-19/2021/7** of 30 July 2021, **0700-4/2021/8** 2021/8 of 7 September 2021, **0700-14/2021/10** of 7 September 2021, **0700-17/2021/12** of 6 October 2021, **0700-55/2020/17** of 11 October 2021, **0700-16/2021/10** of 18 November 2021, **0700-3/2021/6** of 13 December 2021, Decision on the suspension of the proceeding No. **0700-1/2021/11** of 11 October 2021).

1.12.3 Assessments of discriminativeness of regulations with regard to the personal ground of health status

The restrictions of exit from the country with the purpose of the epidemic containment were, according to the Advocate, discriminatory

The Advocate received two complaints in connection to an Ordinance by which the Government of the Republic of Slovenia prevented the citizens of Slovenia from travelling to the countries on the red list due to the poor epidemiological situation during the covid-19 epidemic. The prohibition did not apply to recovered and vaccinated persons and to a few specific exceptions. The first complainant stated that the Government of the Republic of Slovenia discriminates against him on the basis of his health status, as he did not get over the covid-19 disease because he followed the preventive measures, while he was also not able to get vaccinated at that time. This prevented him from accessing his own real estate property in the Republic of Croatia.

The other complainant mentioned in the complaint a statement by the Minister of the Interior that such measure is necessary due to the danger connected to potential travel of citizens to countries of the former Yugoslavia during Easter holidays. The second complainant considered that these were obvious measures to create inequality and called on the Advocate to take action. The prohibition on exit from the country was set out in the Ordinance determining the conditions of entry into the Republic of Slovenia to contain and control the covid-19 infectious disease (Official Gazette of the Republic of Slovenia, No. 46/2021).



The Ordinance has been in force since the 29 March 2021 until 11 April 2021. The Advocate assessed that according to the conducted three-step proportionality test, the prohibition of exit from the country or travelling to countries on the red list, as determined in the first paragraph of Article 11 of the Ordinance, followed the legitimate goal of preventing the spread of infections, while however the means of achieving such goal were only partially adequate, and in particular they were not (absolutely) necessary and proportionate in the narrow sense to prevent the uncontrolled spread of covid-19 and avoid the breakdown of the health system.

Since the measures didn't fulfil the criteria to be acknowledged as an exception to the prohibition of discrimination, the Advocate considered the first paragraph of Article 11 of the Ordinance to be discriminatory. It was discriminatory against all persons who had not yet recovered from covid-19 or had not yet been vaccinated against the infectious disease (i.e. due to their health status – the lack of antibodies against the SARS-CoV-2 virus) and at the same time did not fall under any of the specific exceptions (referred to in the first paragraph of Article 10 of the Ordinance). It was also discriminatory against all individuals coming from the countries of the former Yugoslavia (i.e. from the perspective of their personal grounds of nationality and citizenship) who did not qualify as any of the exceptions to the prohibition on leaving the country. In the present case, the Article 11 of the Ordinance, excessively restricted the freedom of movement of persons, as it (according to the purpose or objective of the measure presented) disproportionately interfered with the right to enjoy privacy in connection with private property in another country and with the right to private and family life of persons exercising this right in another country than their country of residence. Given that the Ordinance under consideration was no longer in force at the time of the assessment procedure before the Advocate, and since the alleged unconstitutionality of Article 11 of the present Ordinance is already being considered by the Constitutional Court, the Advocate did not submit a request for constitutional review of the regulation before the Constitutional Court of the Republic of Slovenia under Article 38 of the PADA. Hence, the discrimination assessment procedure was completed. (050-16/2021/4 and 050-18/2021/10)

1.12.4 The Advocate's recommendations regarding the personal ground of health status

Recommendation on the implementation of the National Covid-19 Vaccination Strategy

The Advocate recommended that the Government should use all available resources and measures to ensure that the most vulnerable groups, in particular the elderly and persons with chronic diseases, get vaccinated consistently and as early as possible. In doing so, the right to equal treatment of inhabitants should be respected irrespective of their place of residence. (0709-23/2021/1)

Recommendation status: ● Taken into account.

Recommendation of the Draft Act on the Provision of Funds for Investments in the Slovenian Health Care in the Years 2021 to 2031

The Advocate recommended that the Ministry of Health should commit to achieving the key objectives set out in the Resolution on the National Health Care Plan 2016-2025, in particular the goal of overcoming health inequalities. It was also recommended that the Draft should set out in a more specific manner the objectives of the capacity development of nursing homes and hospitals, the need for adequate palliative care for patients and the means of ensuring accessibility of health services for people with disabilities. (0070-11/2021/1)

Recommendation status: ● Not taken into account.

Recommendation on the prohibition of exit from the country

In a recommendation aimed at the provisions of the Ordinance restricting the right to leave the country and come back, the Advocate pointed to the potentially disadvantaged treatment of those who did not have access to vaccination, those who did not recover from covid-19 and the descendants of immigrants or foreign nationals. The Advocate added that conditioning the exit from the country upon paying penalties for those who, due to their personal grounds, do not meet the conditions for exit is potentially inconsistent with the Ordinance, the Communicable Diseases Act and the Constitution. (050-18/2021/3)

Recommendation status: ● Taken into account by termination of the Ordinance.

1.12.5 The Advocate's educational and awareness-raising activities with regard to the personal ground of health status

Panel discussion on the occasion of the World Atopic Dermatitis Day

On 19 September 2021, a representative of the Advocate attended a panel discussion on the occasion of the World Atopic Dermatitis Day (which is celebrated on 14 September). Atopic eczema is a chronic, inflammatory skin disease with severe itching that has a complicated mechanism of onset and a number of causal factors. Patients with atopic eczema, especially parents of children with this disease, often do not receive all relevant information on the treatment of the disease and on what such chronic patients are entitled to. The Advocate's representative presented the Advocate's competences and work. He also explained that disability and health status are personal grounds protected under the PADA, therefore all persons with disabilities and patients, including those with atopic eczema, must be treated equally and be guaranteed the protection of this right.



1.12.6 The Advocate's cooperation with civil society with regard to the personal ground of health status

With the objective to contain the spread of covid-19 infection, the Advocate cooperated with civil society organisations mostly in writing.

The cooperation in writing covering the situation of the homeless concerned questions on the number of homeless people, the key reasons for homelessness, implementation of preventive and supportive programmes, implementation of specific activities and measures during the covid-19 epidemic, ways and scope of financing programmes for the homeless and obstacles and challenges in preventing homelessness. The Advocate included the analysis of the responses received in the framework of the written cooperation in the recommendation on the improvement of the situation of the homeless.⁸

Representatives of the Advocate at the working meeting with the members of the Viljem Julijan Association for Children with Rare Diseases

On 4 May 2021, the Advocate's advisors attended an online working meeting at the invitation of the Viljem Julijan Association for Children with Rare Diseases. At the meeting, representatives of the non-governmental organisation presented the problems faced by children with rare, mostly incurable diseases and their parents. They pointed out the difficulties related to the process of applying for childcare allowance, moreover problems were detected also in relation to the Personal Assistance Act. The Advocate's advisors presented the Advocate's competencies and ways in which the Advocate can help in cases of perceived discrimination and in cases of allegedly discriminatory regulations. They emphasised the Advocate's advisory function and presented some specific examples of discrimination investigation related to the personal grounds of disability and health status of children.

The Advocate's meeting on criteria for determining company performance

On 11 February 2021, the Advocate met with representatives of the Working Group of the Strategic Council for Collective Bargaining (WG SCCB) at the Chamber of Commerce and Industry of Slovenia (CCIS). The meeting took place at the initiative of the CCIS with the aim of conducting an expert discussion featuring the Advocate and members of the CCIS. The topic of the discussion was in particular the question whether, according to the Advocate's assessment, the provisions of collective agreements for economic activities in the part determining the criteria for company performance bonus or determining the starting points for consideration at the level of employers are in accordance with the law and pass the test under Article 21 of the Protection against Discrimination Act.

⁸ Available at: <https://www.zagovornik.si/priporocila/>

1.13 Pregnancy and/or parenting

1.13.1 Advisory, informing and support activities related to the personal ground of pregnancy and/or parenting

Taking into account attendance at work in determining the amount of company performance bonus may constitute indirect discrimination against workers on the basis of parenthood

In 2021, the Advocate also received questions from employees regarding the manner of calculation of the amount of company performance bonus. In the subject cases, the employer paid the Christmas bonus, which is not mandatory under law, in different amounts calculated according to workplace attendance. The Advocate explained to the clients its position that in the event of a decrease in company performance and in the event of absence due to parental, maternity or paternity leave, discrimination on the grounds of parenthood and indirectly also gender occurs (as parental leave is usually taken by women and paternity leave by men). In the clarification, the Advocate informed the clients of a judgement of the Administrative Court of the Republic of Slovenia I U 29/2020-21, which confirmed the Advocate's decision that discrimination is given in such a case. The clients were advised to bring to the attention of the employers the issue of discrimination or to submit a complaint with the Advocate which may also be anonymous. The advisory procedures have thus been completed. **(0702-252/2021, 0702-235/2021)**

Taking parental leave must not be a reason for termination of the employment contract

The Advocate was approached by an individual who sought advice as she was served with the termination of the employment contract after taking parental leave and annual leave from the previous year. The reason for the termination was allegedly the lack of work, however the client stated that the reasons were her pregnancy and use of parental leave. The Advocate presented the client the legal framework of the protection against dismissal in these cases. The client was informed that if according to their opinion, the termination of the employment contract was not justified, they can file a lawsuit against the termination of the employer within 30 days from the service of the termination before the competent labour court. The employer must state in writing the actual reason for the termination. It is important that this is a real and factually existing reason that does not conceal another reason, which should also be proved in a potential court proceedings. The Advocate informed the client that pregnancy and parenthood are also considered as unfounded reasons for termination. Regarding the special protection of parents, the Advocate drew the individual's attention to the provision of Article 115 of the ERA-1, which stipulates that the employer may not terminate the employment contract of a worker during pregnancy or a worker who is breastfeeding a child up to one year of age, or parents during the time when they use parental leave in an uninterrupted manner of a full absence from work and for one month after such leave. The Advocate encouraged the client to contact the equality body again if additional/further assistance is needed. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. **(0702-117/2021)**



Based on taking advantage of “care due to force majeure”, parents must not suffer negative consequences

The Advocate was asked for an opinion and advice by a transferred worker. She considered that the transfer was the result of her occasionally taking advantage of the so-called “care due to force majeure” which enabled her to care for her children during the covid-19 epidemic, when regular schools were providing distance education. The Advocate explained to the client that in accordance with the so-called intervention legislation adopted as a result of the epidemic, she has the right to be absent from work in cases when she cannot perform work due to force majeure resulting from the obligation to care for her child because of a quarantine order or other external objective circumstances of inability to attend school (school closure). The Advocate explained to the client what remedies are available against the transfer and presented the possibility of conducting a discrimination investigation procedure. The client did not choose to submit the complaint. The advisory procedure has thus been completed. (0702-33/2021)

Breastfeeding mothers enjoy additional protection in the field of employment

The Advocate was approached by a worker regarding the unequal treatment of breastfeeding and non-breastfeeding mothers in labour law legislation. The worker considered to be discriminated in relation to mothers who were breastfeeding as she was not allowed to breast-feed her child for health reasons, and therefore the protection against dismissal applied for a shorter period for her compared to breastfeeding mothers. The Advocate explained that breastfeeding mothers are a particularly vulnerable group of women (while three relevant factors are given, namely: female gender, maternity and parenting and breastfeeding). Breastfeeding mothers may be victims of several forms of discrimination when they wish to exercise the right to a breastfeeding break at the workplace. The Advocate explained that the legislation seeks to limit such situations as much as possible by means of a legal regulation and to protect this particularly vulnerable group of women. Breast-feeding mothers are granted additional protection. It is important to note that, irrespective of the circumstance of breastfeeding, mothers are a specially protected category of workers, nevertheless breastfeeding mothers and non-breastfeeding mothers are not in a comparable situation. The client failed to respond to the Advocate’s clarification. The advisory procedure has thus been completed. (0702-43/2021)

A worker must not be subject to a poorer assessment when taking advantage of benefits that she is entitled to as a parent

Several female workers approached the Advocate asking for help in a situation of alleged discrimination in assessing their performance. They considered that their annual performance assessment was less favourable as they worked part time due to parenting. The Advocate explained to the clients what the statutory elements of performance assessment are and highlighted certain problematic reasons, which the employer referred to in the explanation to their assessment. The Advocate informed the clients of their legal options and encouraged them to submit a complaint. In these cases, no complaints were submitted by the clients. The advisory procedures have thus been completed. (0702-74/2021, 0702-244/2021, 0702-140/2021)

1.13.2 Discrimination investigation in relation to the personal ground of pregnancy and/or parenting

Christmas bonuses which are linked to the employee's attendance at the workplace constitute inadmissible discrimination on the grounds of health and/or parenting

In 2021, the Advocate found discrimination in the payment of company performance bonus and Christmas bonus in several cases, when employers considered the absence from work due to health (sick leave) or parenting (maternity or paternity leave, leave for child care) as a criterion for the method of calculating Christmas bonus. In these cases, employers reduced the payment for those employees who were on sick leave or parental leave. In some cases, the Advocate found either indirect or direct discrimination, depending on how the calculation criteria were formulated. If the criteria referred directly to sick leave or parental leave, direct discrimination was identified. If they criteria were seemingly neutral in relation to the personal grounds of the employee and related to the absence in general, an indirect form of discrimination was determined. The latter is given when a seemingly neutral criterion puts a person with a certain personal ground at a disadvantage, and at the same time such a method of calculation is not in accordance with the proportionality test, which the Advocate examines in each case individually. In such cases, therefore, the criteria applied to all employees equally, but they put particular employees at disadvantage due to their personal grounds of health status, parenthood, pregnancy and also gender (because only women get pregnant and paternity leave can only be used by men). In the case of two issued decisions, the violator filed a lawsuit with the Administrative Court of the Republic of Slovenia, the proceedings are still pending. In one case, the Advocate issued a decision on the suspension of the procedure of discrimination investigation in the payment of company performance bonuses, as neither the complainant nor the alleged violator enclosed evidence for their allegations. (Decisions No. 0700-14/2020/7 of 22 February 2021, 0700-19/2021/7 of 30 July 2021, 0700-4/2021/8 of 7 September 2021, 0700-14/2021/10 of 7 September 2021, 0700-17/2021/12 of 6 October 2021, 0700-55/2020/17 of 11 October 2021, 0700-16/2021/10 of 18 November 2021, 0700-3/2021/6 of 13 December 2021, Decision on the suspension of the proceeding No. 0700-1/2021/11 of 11 October 2021).



The Advocate contributed to the conclusion of a settlement in the case of lower company performance bonuses due to maternity and sick leave

The Advocate was approached by an individual regarding the payment of a lower company performance bonus based on her absence from work due to maternity and sick leave. In the complaint she stated that in 2017, 2018 and 2019, her employer was paying her the part of her salary dedicated to company performance while having regard to her attendance at the workplace. In order to verify the facts, the Advocate contacted the employer and asked for clarifications. In the reply sent to the Advocate, the employer explained that an amicable resolution was reached with the complainant and the Advocate's directions were followed regarding the prohibition of indirect discrimination on the grounds of pregnancy, parenthood and health status in the payment of company performance bonus. The complainant informed the Advocate that an appropriate settlement was reached with the company regarding the payment of company performance, as the employer paid her the difference to full company performance bonus for all previous years. The Advocate then closed the discrimination investigation procedure by a decision. (Decision on the suspension of the proceeding No. **0700-18/2021** of 14 May 2021)

1.13.3 Assessments of discriminativeness of regulations with regard to the personal ground of pregnancy and/or parenting

In 2021, the Advocate did not conduct assessments of discriminativeness of regulations with regard to the personal ground of pregnancy and/or parenting.

1.13.4 The Advocate's recommendations regarding the personal ground of pregnancy and/or parenting

Recommendation on legal protection of female workers who have recently given birth and have concluded an employment contract of definite duration

It was recommended that the MLFSAEO should strengthen the protection of female workers who have recently given birth and have concluded an employment contract of definite duration. In particular, a more effective legal protection of victims of discrimination based on gender and other forms of discrimination against women and men in employment relationships was advocated. Moreover, exploring various possible solutions for safer and continuous employment was recommended. (**0709-20/2021/1**)

Recommendation status: ● Taken into account.

Recommendation on performance review of civil servants

It was recommended that MPA should address a circular letter to all state authorities and public institutions stating that poor performance review in connection to justified absence from work constitutes indirect discrimination, which is legally prohibited, and that persons responsible for assessing employee performance must consider this fact when preparing the annual performance reviews. (0700-26/2020/42)

Recommendation status: ● Taken into account.

Recommendation on the amendment to the Family Code

The Advocate recommended that the MLFSAEO should prepare an appropriate amendment to the transitional provisions of the Family Code so that the courts could decide on the so-called shared custody also in all cases of separation proceedings initiated before 15 April 2019, when this is in the best interests of the child. (0709-34/2021/1)

Recommendation status: ● Not taken into account.



1.14 Citizenship

1.14.1 Advisory, informing and support activities related to the personal ground of citizenship

Advising a client in relation to alleged discrimination in the workplace based on citizenship and nationality

The Advocate was approached by a client of Bulgarian nationality. The client claimed that discrimination on the grounds of citizenship and nationality took place, especially in terms of working conditions and employment. Among other things, the client listed a larger number of employers, administrative units and social work centres as potential violators. The Advocate explained what discrimination meant and that in the subject case not all necessary facts were demonstrated to justify the presumption that the prohibition of discrimination had been violated and that the burden of proof be passed on to the alleged offenders. When fulfilling the burden of allegation the alleging party must present sufficiently specific circumstances of its case and at least some possible evidence on the basis of which it is likely to conclude that discrimination might have occurred. Simply stating that a person was treated less favourably because of his or her personal grounds is not sufficient in the discrimination proceedings. The Advocate explained to the client that not every irregularity and injustice constitutes discrimination and informed them about the manner in which the discrimination investigation procedure is conducted. The client failed to respond to the clarification. The advisory procedure has thus been completed. **(0702-113/2021)**

The admissibility of the employer's question on the nationality of the candidate depends on the specific situation

The Advocate was approached by a client regarding a job interview, at which the employer asked them what their nationality was. The client wondered whether such a question was permissible and whether discrimination was involved. The Advocate explained that both ERA-1 and PADA oblige the employer to ensure equal treatment to jobseekers when recruiting. Employment and work of foreigners is regulated by the special Employment, Self-employment and Work of Foreigners Act. Under this Act, only certain groups of foreigners have the right to free access to the labour market, while the employment of other foreigners must be carried out in accordance with special procedures laid down by the aforementioned Act. In addition, in some cases citizenship is a statutory condition for applying for a position (e.g. military, police, public administration). It was not clear from the client's question what the position was, and the appropriateness of the question regarding citizenship depend on the specific situation. If the question is connected to verifying the conditions for the position or the manner in which the employment process must be carried out, the question might be justified. Namely, some foreigners need the consent of the employment service or permission for seasonal work, which must be arranged by the employer. However, if the information is not directly related to the employment relationship and the employer wishes to obtain the information with the purpose of discriminating the candidate on the grounds of citizenship, it is prohibited. In such cases, the candidate for employment shall have the right to refuse to answer such a question. The client failed to respond to the clarification. The advisory procedure has thus been completed. **(0702-47/2021)**

Access to social housing for the erased inhabitants of the Republic of Slovenia

The Advocate was approached by a client from a family of the inhabitants that were erased from the register of permanent residents of the Republic of Slovenia. Since she was not a citizen of Slovenia, nor a citizen of other members of the European Union and does not have a recognised status of a beneficiary erased from the register of permanent residents, she is not able to access social housing. The Advocate advised her on how she could participate in the proceedings despite that and what arguments she should use. In particular, he drew attention to the problem of the Housing Act, which treats third-country nationals who are long-term residents unequally, and advised the direct application of European Union Directive No. 2003/109/EC. The client failed to respond to the clarification. The advisory procedure has thus been completed. (0702-218/2021)

Advising an EU citizen on the possibility of applying for a residence card with a validity of five years

The Advocate was approached by a Bulgarian national who explained the obstacles encountered in obtaining residence cards. She alleged discrimination against other EU citizens who were issued a residence card with a validity of five years. She stated that she had to renew her residence card every month, as she has a short term employment contract. She also added that the administrative unit often rejects her photo, which is why she needs to be photographed again and again. This leads to additional costs and is time consuming. In connection with the client's writing, the Advocate addressed a query to the administrative unit as to whether, depending on the circumstances presented in the procedure for obtaining the residence card, the client could make a statement about the intended stay in the Republic of Slovenia and thus obtain a certificate with longer validity (maximum five years) and a question regarding the rejection of photographs. The response of the administrative unit shows that there has been a change of practice at the specific administrative unit and, if they meet the legal requirements, they will issue certificates to foreigners with a validity of five years, unless the client explicitly declares that they will stay in the Republic of Slovenia for a shorter period of time. The Advocate advised the client to explicitly apply with the administrative unit for a residence card with the validity of five years next time as she is an EU citizen. Regarding the rejection of photographs, the Advocate advised that an option of e-photograph be used with a reference number of the photograph from the electronic repository issued by an authorised photographer. The photo will be stored in the central electronic repository for one year, during which it can be used for the production of the document without any limitations. The advisory procedure has thus been completed. (0702-198/2021)



Advising a client in relation to the rights of the citizens erased from the register of the Republic of Slovenia

A client forwarded a letter from their father to the Advocate stating that he was a part of the citizens erased from the register and asked for help. The Advocate explained to the client that both the Constitutional Court of the Republic of Slovenia and the ECHR confirmed the discriminativeness of the erasure. At the same time, the Advocate pointed out that the equality body has no competence to grant anyone the status of an erased citizen. He referred the client to the administrative unit, and if a procedure on the issuance of a permanent residence permit or a supplementary decision has already been conducted with a negative outcome, legal remedies should be used, namely an appeal to the Ministry of the Interior. The Advocate asked the client additional questions to be able to provide additional assistance. However, no response was received by the Advocate. The advisory procedure has thus been completed. (0702-138/2021)

Limitations to the number of foreigners without Slovenian citizenship in a sports team may be permissible if justified by the proportionality test

Competition Rules of one of the sports federations set out that only citizens of Slovenia have the right to participate in national championships, which is not the case in national league competitions, where two players of foreign citizenship can compete, hence the client was interested in knowing whether such restrictions are discriminatory. The Advocate referred to a decision of the Court of Justice of the EU that it obviously seems legitimate to detain the title of a national champion in a sporting discipline to own nationals, as the national element is one of the characteristics of the title of a national champion. Moreover, the purpose of limiting the number of foreign players in a team can also contribute to the development of players from the local environment and thus the expansion of sports. On the other hand, the regulation may be intended to enable the strengthening of a particular sporting discipline with the help of foreign players from countries where this sport is more developed. The specificity of the sport is that even a small number of top players can crucially shift the power ratio to the side of one team, where of course the question of the size of the team is also relevant. Consequently, a Slovenian team with a large number of foreign players could beat other teams which do not have the opportunity to acquire such quality players from abroad. The Advocate explained to the client that such an arrangement may be appropriate if justified by a legitimate objective and compliant with the principle of proportionality. The client was invited to submit a complaint. However, they did not choose to do so. The advisory procedure has thus been completed. (0702-51/2021)

1.14.2 Discrimination investigation in relation to the personal ground of citizenship

In 2021, the Advocate did not issue any decision dealing with discrimination investigation in relation to the personal ground of citizenship.

1.14.3 Assessments of the discriminativeness of regulations with regard to the personal ground of citizenship

The exclusion of foreign students from the solidarity allowance during the covid-19 epidemic is not discriminatory

The Advocate received a complaint where the complainant stated that indirect discrimination occurred in the payment of solidarity allowance to students within the set No. 7 of measures to mitigate the effects of the epidemic as it was conditional to have a permanent residence in the Republic of Slovenia. International students who pursue a full course of studies while living and working in Slovenia were excluded. The Advocate assessed that the situation of adults with permanent residence in the Republic of Slovenia in its essential factual and legal elements is not comparable to that of adults who do not have permanent residence in the Republic of Slovenia. There is no legal or constitutional basis to justify that students with a temporary residence in the Republic of Slovenia should also be entitled to the one-off solidarity allowance. The narrowly defined economic and social rights or benefits granted to temporary residents have a completely different nature and weight and pursue completely different objectives, such as safeguarding children's rights and labour rights, in respect of which the rights of temporary and permanent residents are equivalent. In addition, by studying in the Republic of Slovenia and obtaining a temporary residence permit, an individual still retains the rights and benefits arising from the epidemic containment measures provided by the country of their permanent residence and citizenship. In view of the above, the Advocate decided not to carry out a more detailed discriminatory assessment. The discriminatory assessment procedure has thus been completed. (050-7/2021/3)

According to the Advocate's assessment, the regulation of the exemption from court fees for foreigners without a residence in Slovenia is not discriminatory

The Advocate ex officio examined the regulation of exemption from court fees for foreigners, namely the question whether foreigners with permanent or temporary residence in the Republic of Slovenia (RS) or foreigners without a registered residence in RS are excluded from the right to exemption from court fees in accordance with the applicable legislation. Foreign citizens are exempted from court fees if an international treaty so provides or if reciprocity applies. If one of these two conditions is not fulfilled, foreigners are not exempted from paying court fees in the Republic of Slovenia. Foreign citizens can therefore only be exempted from the payment of court fees if an international treaty so provides or if reciprocity applies. The Advocate assessed that citizens of a foreign country which failed to conclude an international treaty with RS or for which reciprocity does not apply (who are not citizens of a third country legally residing in one of the Member States in accordance with the principle of non-discrimination from Article 4 of Directive 2003/8/EC) are not in a comparable situation to that of nationals of a foreign country which concluded an international treaty with the Republic of Slovenia or for which reciprocity applies.



The Advocate assessed that the exclusion of the possibility of such exemption for foreigners coming from countries which failed to conclude an international treaty with RS or for which reciprocity does not apply, does not constitute discrimination, as such differential treatment is based on a legitimate objective and the means of achieving this objective are appropriate, necessary and proportionate. If a foreigner from this group was given the opportunity to claim an exemption from court fees, while the lack of a legal basis makes it impossible to obtain information on his or her financial situation, a delay in court proceedings would take place. Such a situation would be problematic in terms of effective judicial protection and in terms of pursuing a trial without undue delay or the right to a trial within a reasonable time. The discriminatory assessment procedure has thus been completed. (050-9/2019/5)

The exclusion of foreigners from the possibility of quarantine suspension based on a negative covid-19 test was eliminated and therefore does not represent discrimination

The Advocate received a complaint regarding the possibility of quarantine suspension by submitting a negative covid-19 test, which was granted to citizens but not to foreigners. This possibility was provided for by the provisions of the then applicable Ordinance determining the conditions of entry into the Republic of Slovenia to contain and control the covid-19 infectious disease (Official Gazette of the Republic of Slovenia, No. 196/20 and 204/20). The complainant asked about the reasons and purpose of such a provision, according to which the suspension of quarantine through submitting a negative covid-19 test is only available to citizens of the Republic of Slovenia. The Advocate found a potential discriminativeness of the regulation based on citizenship as a personal ground. Later the Advocate found that the Government of the Republic of Slovenia amended the contested provision in such a way that the provision applied to every person and no longer just to the citizens of the Republic of Slovenia. Since the Government eliminated the discrimination by means of the next Ordinance, the Advocate did not carry out a more detailed assessment of discriminativeness. The discriminatory assessment procedure has thus been completed. (050-2/2021/3)

1.14.4 The Advocate's recommendations regarding the personal ground of citizenship

Recommendation aimed at the Draft Act Amending the Labour Market Regulation Act

The Advocate recommended that in the Draft Act, the MLFSAEO should explain the purposes and objectives of the proposed amendments to the legal provisions regarding the redefinition of suitable employment, extension of the public works period and changes regarding the handling of appeals against the decisions of the Employment Service, and support them with data and explain how the Ministry ensures the proportionality of the proposed measures. It was further recommended that the Draft Act be supplemented as to abolish the provision of the current act, which stipulates the condition of the knowledge of the Slovenian language for foreigners, as it distinguishes between registered unemployed persons on the basis of (a personal ground of) citizenship, and indirectly on the basis of other personal grounds. (0709-29/2021/1)

Recommendation status: ● The legislative process is still ongoing.

Recommendation on the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (one-off solidarity allowance for newborns)

The Advocate assessed the discriminativeness of Article 101 of the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (Set No. 7 of measures to mitigate the effects of the epidemic) and found that the regulation unjustifiably excludes persons with temporary residence who actually live in Slovenia. It namely stipulates that only beneficiaries with permanent residence in Slovenia may receive the exceptional aid. The Advocate recommended that the MLFSAEO should immediately initiate a procedure to eliminate the discriminativeness of the regulation. **(050-9/2021/8)**

Recommendation status: ● Not taken into account. The Advocate submitted a request for the assessment of constitutionality.

Recommendation aimed at the Draft Act Amending the Housing Act

The Advocate recommended that the National Assembly should ensure that the harmonisation (of the increase) of the rent subsidy be adjusted to the planned increase of non-profit rent and adopt a new provision that would explicitly prohibit discrimination in real estate advertising and on the real estate market. It was also recommended that the circle of beneficiaries of non-profit rental housing be extended in line with the Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents and that the law justifies the tender criteria for the selection of tenants of public rental housing (as a specific measure to ensure equality under the PADA). **(0709-62/2020/2)**

Recommendation status: ● Not taken into account.

Recommendation on the prohibition of exit from the country

In a recommendation aimed at the provisions of the Ordinance restricting the right to leave the country and come back, the Advocate pointed to the potentially disadvantaged treatment of those who did not have access to vaccination, those who did not recover from covid-19 and the descendants of immigrants or foreign nationals. The Advocate added that conditioning the exit from the country upon paying penalties for those who, due to their personal grounds, do not meet the conditions for exit is potentially inconsistent with the Ordinance, the Communicable Diseases Act and the Constitution. **(050-18/2021/3)**

Recommendation status: ● Taken into account by termination of the Ordinance.



1.15 Place of residence or domicile

1.15.1 Advisory, informing and support activities related to the personal grounds of place of residence or domicile

Varying degree of co-financing depending on the place of residence does not necessarily constitute discrimination based on the place of residence

The Advocate was approached by a father who has a daughter, who is placed in an institution for day care due to disability. The Ministry of Education, Science and Sport only covers the costs for the time of the school year, while the costs of above-standard activities outside this time period are borne by the parents. The Institute agreed with the municipalities on the possibility of co-financing the above standard (i.e. treatment outside the school year). However, municipalities cover the costs differently, some in full, others in part. The client states that discrimination occurs based on place of residence, as the institution charges parents for above-standard activities within the same protection program in different ways, some annually, others monthly. The Advocate explained that different billing (monthly, annual) does not have a different effect. However, there are differences between the amounts borne by the parents, since it depends on the individual municipality what amount is provided to co-finance the above-standard programmes. The Advocate explained that the aforementioned co-financing is in the discretion of each municipality and the exercise of the competences of the municipality. Moreover, the Advocate explained that in addition to the specific assistance from municipalities, there are other forms of assistance available in the Slovenian society to help materially disadvantaged persons, which are provided either by the state or by municipalities. The Advocate explained to the client that in the case of social vulnerability, parents can take advantage of various other types of assistance, also for the purpose of covering the costs of childcare. The advisory procedure has thus been completed. [\(0702-241/2021\)](#)

Exclusion from the possibility of building a solar power plant for monumentally protected buildings is not a matter of discrimination

The Advocate received a letter from a client who encountered difficulties in building a solar power plant. Since the property where the power plant was supposed to be located is surrounded by buildings under monumental protection, such construction was prevented, and the client's right to self-handle was thereby interfered with. The client alleged discrimination on the grounds of place of residence. The Advocate explained that the conditions for the installation and construction of a solar power plant may contain exceptions resulting from monumental protection, which has nothing to do with the client's place of residence, but depends on the status of the building. The Advocate explained that the final position could be adopted after the completion of a discrimination investigation procedure. The client was invited to submit a complaint and all applicable documentation. The client did not choose to initiate the proceedings. The advisory procedure has thus been completed. [\(0702-158/2020\)](#)

Different arrangements regarding religious services during the covid-19 epidemic in Slovenia and Croatia are not a matter of discrimination

The Advocate received a question from a client regarding the organisation of religious services in relation to the epidemic containment measures. In the territory of the Republic of Slovenia, the limit of thirty square meters per believer was applicable. Croatia addressed the same issue differently, as a limit of seven square metres per believer applied. The Advocate explained that the presented facts fail to indicate any unequal treatment based on the personal grounds of the client. Each country shall adopt measures that apply in its territory under its jurisdiction, equally to all persons in the territory of that State, irrespective of their place of residence within that State. The client failed to respond to the Advocate's clarification. The advisory procedure has thus been completed. (0705-47/2020/2)

1.15.2 Discrimination investigation in relation to the personal ground of place of residence or domicile

The co-incineration of waste at the Šoštanj Power Plant

The Advocate received a complaint by the residents of the Šaleška Valley due to the announced co-incineration of non-hazardous waste at the Šoštanj Power Plant. The complaint suggested that the activity is discriminatory towards the residents of the Šaleška Valley due to the personal ground of place of residence. The Decree on waste incineration and co-incineration plants is allegedly discriminatory while enabling such co-incineration of waste in the Šoštanj Power Plant. The Decree regulates various emission limit values for incineration and co-incineration. During the procedure before the Advocate, the plan of co-incineration of waste in the Šoštanj Power Plant was cancelled, therefore one of the elements of discrimination, i.e. intervention in the right, interest or benefit, was eliminated. In view of the above, the Advocate rejected the complaint. The decision has become final. (Decision No. 0700-9/2020/21 of 8 September 2021)

Discrimination investigation on grounds of place of residence in the maintenance of a healthy living environment

The Advocate received a complaint by the inhabitants of the region where the agricultural activity of hop growing was expanding. They alleged discrimination on the grounds of place of residence and deprivation of the right to health and a healthy living environment. The Advocate noted that the complaints related to shortcomings in the regulation of environmental protection and hop growing for the purpose of setting emission limit values and arable land distance from settlements, failure to implement obligations and lack of supervision by the competent institutions in this case. The Advocate noted that it is impossible to identify in the case a group for comparison whose situation in the essential elements would be the same as that of the inhabitants of the valley. However, finding a group for comparison is an essential condition for discrimination investigation. As it could not be identified, the Advocate was unable to conduct the discrimination investigation procedure, nevertheless, the Advocate informed the Ombudsman of the matter and referred the case to the Ombudsman for further consideration. The decision has become final. (Decision No. 0700-40/2019/21 of 15 December 2020)



1.15.3 Assessments of discriminativeness of regulations with regard to the personal ground of place of residence or domicile

Restrictions in the granting of solidarity childbirth allowance only to persons with permanent residence in Slovenia represents discrimination

The Advocate of the Principle of Equality conducted an assessment of the discriminativeness of Article 101 of the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (Set No. 7 of measures to mitigate the effects of the epidemic). The Article sets out the amount and conditions of obtaining a one-off solidarity allowance for children born just before, during and up to one year after the end of the covid-19 epidemic, i.e. until 15 June 2022. The Advocate assessed that the regulation unjustifiably excludes persons with temporary residence who actually live in Slovenia from receiving this social benefit. It namely stipulates that only beneficiaries with permanent residence in Slovenia may receive the exceptional aid. Thus, according to the Advocate's assessment, some persons are discriminated against on the basis of their personal grounds of place of residence and citizenship. As the victims of discrimination are children, according to the Protection against Discrimination Act such regulation represents a more serious form of discrimination. The Advocate recommended to the Ministry of Labour, Family and Social Affairs that the procedure for elimination of the discriminativeness of the regulation be initiated immediately, otherwise, a request for the assessment of constitutionality will be submitted with the Constitutional Court based on the assessment of discriminativeness conducted. The Ministry failed to follow the recommendation, so the Advocate submitted a request for the assessment of constitutionality of Article 101 of the Set No. 7 of measures to mitigate the effects of the epidemic. The equality body suggested that the Constitutional Court consider the case as a matter of priority, as the case in question represents, according to the Advocate's assessment, a serious form of discrimination. The victims of discrimination in this case are children entitled to exceptional solidarity assistance, moreover, discrimination in the subject matter is also widespread. According to the Advocate's assessment, the regulation is inconsistent with Articles 2, 3a, 8, 14, 15, 50, 53 and 56 of the Constitution, with certain articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter, the International Covenant on Social, Economic and Cultural Rights and the Convention on the Rights of the Child. The proceedings before the Constitutional Court are still pending. [\(050-9/2021/7\)](#)

1.15.4 The Advocate's recommendations regarding the personal ground of place of residence or domicile

Recommendation on the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (one-off solidarity allowance for newborns)

The Advocate assessed the discriminativeness of Article 101 of the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (Set No. 7 of measures to mitigate the effects of the epidemic) and found that the regulation unjustifiably excludes persons with temporary residence who actually live in Slovenia. It namely stipulates that only beneficiaries with permanent residence in Slovenia may receive the exceptional aid. The Advocate recommended that the MLFSAEO should immediately initiate a procedure to eliminate the discriminativeness of the regulation. **(050-9/2021/8)**

Recommendation status: ● Not taken into account. The Advocate submitted a request for the assessment of constitutionality.



1.16 Marital status

1.16.1 Advisory, informing and support activities related to the personal ground of marital status

In 2021, the Advocate did not provide advisory, informing and support activities with regard to the personal ground of marital status.

1.16.2 Discrimination investigation in relation to the personal ground of marital status

In 2021, the Advocate did not issue any decision dealing with discrimination investigation in relation to the personal ground of marital status.

1.16.3 Assessments of discriminativeness of regulations with regard to the personal ground of marital status

According to the Advocate, the regulations governing access to procedures of biomedically-assisted procreation are discriminatory against infertile women who are not in a marriage or extramarital union

The Advocate considered that the legislation governing access to procedures of biomedically-assisted procreation (assisted reproductive technology, ART) is discriminatory against infertile women who are not in a marriage or extramarital union. These women are denied access to assisted procreation only because they are single, divorced, widowed, or live in other types of partnerships or life communities, including same-sex partnerships. According to the Advocate's assessment, the less favourable treatment in the field of health care which is based on such personal grounds is unfounded and therefore unjustified. Hence the Advocate filed a request for constitutional review of those parts of regulations governing access to the ART procedures. Pursuant to Article 14 of the Constitution, human rights are guaranteed to everyone, regardless of their personal grounds, while Article 55 of the Constitution guarantees everyone the freedom to decide on the birth of children. The proceedings before the Constitutional Court of the Republic of Slovenia are still pending. [\(050-1/2017/24\)](#)

1.17 All personal grounds

1.17.1 Advisory, informing and support activities

In 2021, the Advocate did not provide advisory, informing and support activities involving all personal grounds together.

1.17.2 Discrimination investigation

In 2021, the Advocate did not issue any decision dealing with discrimination investigation involving all personal grounds together.

1.17.3 Assessing the discriminativeness of regulations

In 2021, the Advocate did not conduct assessments of discriminativeness of regulations involving all personal grounds together.

1.17.4 Recommendations by the Advocate

Recommendation on accessibility and free of charge testing for covid-19

The Advocate recommended that the Government should provide for generally accessible and free of charge testing using rapid antigen tests. [\(050-32/2021/9\)](#)

Recommendation status: ● Taken into account.

Recommendation on the Draft National programme of higher education 2021–2030

The Advocate recommended to the MESS that additional goals and measures be added to the national programme to ensure the monitoring of the actual implementation of equal opportunities for students with different personal grounds, to introduce special, dedicated scholarships for students with special needs and incentives for training and raising awareness of the teaching staff in the field of human rights and protection against discrimination of students with special needs. [\(0070-19/2021/1\)](#)

Recommendation status: ● The Act is still in the process of adoption.



Recommendation on the Draft Consumer Protection Act

The Advocate recommended that the MEDT should include a clear provision in the Act on the prohibition of consumer discrimination; obligations to ensure accessibility in communication with consumers with disabilities in appropriate language and alphabet; and on the prohibition of advertisements promoting inequality, intolerance and hatred. **(0070-14/2021/1)**

Recommendation status: ● The legislative process is still ongoing.

Recommendation on the Draft National programme for promoting the development and use of artificial intelligence in the Republic of Slovenia by 2025

In a recommendation addressed to MPA, the Advocate stressed that the violation of the prohibition of discrimination poses one of the key risks for human rights in the context of the development and use of artificial intelligence, and recommended that this issue and the risks be explicitly highlighted and specifically brought to light in the programme. **(382-3/2021/1)**

Recommendation status: ● Taken into account by supplementing the Draft.

Recommendation on the accessibility of the Legal Information System of the Republic of Slovenia

The Advocate recommended to the Government Legislation Service, in the light of ensuring legal certainty of all legal and natural persons, to ensure the accessibility of the Legal Information System of the Republic of Slovenia (PISRS) as a central free source of information on the applicable regulations with all available resources and measures. **(0702-93/2021/2)**

Recommendation status: ● Taken into account.

1.17.5 The Advocate's educational and awareness-raising activities

Civil Law School

On 25 March 2021, a representative of the Advocate held a lecture entitled "New legal concepts in the field of anti-discrimination law" in the framework of the Civil Law School organised by the Judicial Training Centre at the Ministry of Justice. In the lecture, the Slovenian terminology was presented, which is being established in the field of anti-discrimination law (and in relation to it) and in relations with various forms of discrimination, exceptions to the prohibition of discrimination, special measures and individual personal grounds. Together with the presentation of terminology, the audience was provided with an in-depth presentation of anti-discrimination law and the legal, theoretical and practical issues to be addressed in the decision-making process.

Panel discussion on equality in the business environment

On 12 May 2021, the Head of the Advocate, Miha Lobnik, participated in the panel discussion organised by Young Project Managers on the occasion of the Day of Project Management, where he introduced the establishment and work of the equality body and its systematic work relating to various tasks. He stressed that companies are also obliged to provide protection against discrimination to their employees and service users. He spoke about the general situation in the field of discrimination in Slovenia and presented some data from the Advocate's public opinion survey, e.g. that every fifth person in Slovenia believes that they were subject to discrimination, most commonly in the area of work and employment. The Head of the Advocate, Miha Lobnik, also answered some practical questions on what actions companies should take when one of their employees acts in a discriminatory manner.

Panel discussion on the ethical dilemmas of artificial intelligence

On 17 June 2021, a representative of the Advocate actively participated in a panel discussion held by Nova Ljubljanska banka (NLB) with the title Ethical Dilemmas of Artificial Intelligence, which took place within the public competition for the development of a computer application based on artificial intelligence for assessing the creditworthiness of individuals. The legal competences and tasks of the Advocate were presented as well as various forms and areas of discrimination most closely related to artificial intelligence technologies.

International conference on the regulation of artificial intelligence, ethics and fundamental rights

Within the Slovenian Presidency of the Council of the European Union, an international conference Regulation of Artificial Intelligence – Ethical and Fundamental Rights Aspects was held on 20 June 2021, which was organised by the Ministry of Justice. The event, organised at the highest political level drew attention to the risks brought about by the introduction of artificial intelligence in many areas of human rights protection and ensuring equal treatment. The Head of the Advocate, Miha Lobnik, actively participated in the conference on behalf of the Slovenian equality body and Equinet. He pointed out that the area of artificial intelligence is one of the most exciting areas, as it has the potential to improve the quality of people's lives. At the same time, the introduction of artificial intelligence poses a risk and a threat to human rights, such as the right to equal treatment and equal opportunities. The Head of the Advocate explained that complaints related to decision-making are still rare, which could also be attributed to the obscurity of the functioning of artificial intelligence. He also emphasised the need to include experts representing state authorities dealing with the protection against discrimination in the drafting of acts regulating the use of artificial intelligence.

Webinar for judicial employees

On 3 September 2021, a representative of the Advocate held a lecture entitled Enforcement: Legal Remedies, Sanctions and Solutions in Cases of Discrimination as a part of a seminar "Application of EU Anti-Discrimination Law – Webinar for Judicial Employees", organised by the European Academy of Law and the Judicial Training Centre at the Ministry of Justice of the Republic of Slovenia. Legal remedies that can be used in cases of discrimination, types of possible redress and sanctions that can be imposed by the competent authorities were introduced, as well as other possible solutions to issues in this area (settlement, mediation). Moreover, examples from different EU Member States in the context of implementation of European anti-discrimination law were brought forward.



Slovenian Sociological Association meeting 2021: Pandemic Society

On 24 and 25 September 2021, representatives of the Advocate attended the Slovenian Sociological Meeting 2021 entitled Pandemic Society, organised by the Slovenian Sociological Association. The main topic of the meeting was the covid-19 epidemic, and in the framework of various panel discussions, the participants addressed the social consequences of the epidemic, as well as topics such as old age, gender inequality, education and much more. A representative of the Advocate participated in several panel discussions and explained the Advocate's legal competences and some specific activities.

Panel discussion Contradictions of Equal Opportunities

On 8 October 2021, the Head of the Advocate Miha Lobnik attended a panel discussion entitled Contradictions of Equal Opportunities in the framework of the XXVII days of the Social Chamber of Slovenia where he presented the legal competences and tasks of the Advocate as an independent state authority specialising in protection against discrimination. He explained how the Advocate advises people and conducts discrimination investigation in individual cases. He presented the work of the equality body at the societal level, with emphasis on the field of social protection.



The Head of the Advocate, Miha Lobnik, attended the event on the occasion of the Days of the Social Chamber of Slovenia and presented the work of the equality body at the societal level, focusing on the area of social welfare.

Conference on hate crimes

On 28 October, a representative of the Advocate held a presentation entitled The Role of the Advocate of the Principle of Equality in addressing online hate speech at the conference "Eradicating hate crimes and hate speech – effective combating hate speech and hate crimes and the protection of victims", organised by the Ministry of Justice of the Republic of Slovenia in cooperation with the European Commission in the framework of the Slovenian EU Council Presidency. She presented the Advocate's competences and explained what actions the equality body can take based on the PADA and what actions were already taken in the past in cases of online discriminatory speech. The purpose of assigning authority to the Advocate in the field of discriminatory speech, records and publications is the possibility to address those cases of hate speech which are not covered by the criminal justice system.

1.17.6 The Advocate's cooperation with civil society

Meeting with representatives of the Sloga Platform on the implementation of the 2030 Agenda for Sustainable Development

On 6 May, on the initiative of the Sloga Platform, which brings together 36 NGOs, the Advocate's associates attended an online meeting with their representatives. The purpose of the meeting was a mutual presentation of activities, representatives of the SLOGA platform spoke in more detail about development cooperation, which the platform wanted to highlight in the framework of the Slovenian Presidency of the EU Council. The topic of the meeting was the implementation of the 2030 Agenda for Sustainable Development, both in the framework of development cooperation policies and locally in Slovenia. The elimination of inequalities is a cross-sectional topic in the 2030 Agenda, and some of the Agenda topics are directly a part of the Slovenian foreign policy (gender equality). SLOGA, among other things, performs the function of a "watchdog" in the implementation of the 2030 Agenda. Shadow reports are also being prepared on this subject. It was made clear that the main goal of the SLOGA Platform in Slovenia is for the country to allocate 0.4% of GDP to international development cooperation projects, which is also an international commitment of Slovenia. In Slovenia, SLOGA also promotes the so-called global learning, which focuses on raising awareness on human rights and the importance of a global approach to human rights promotion in the context of global solidarity. The issue of eliminating inequalities plays an important role in this respect.



1.18 Other grounds that are not personal grounds under the PADA

The cases presented below could be classified as *other personal grounds*, which however the Advocate did not identify as personal grounds. These characteristics are namely of such kind that the individual can influence them and easily give up on them as they are a matter of choice. These are the characteristics of an individual, which are not unchangeable and inalienable and are not specifically protected by regulations or international conventions.

Other personal grounds that were not classified as personal grounds by the Advocate in 2021:

- covid pass or DCP condition (recovered, vaccinated, tested);
- mandatory use of protective equipment;
- self-testing;
- workplace;
- employment status, self-employment;
- date of registration as a self-employed person;
- receiving a salary in foreign currency;
- occupation;
- academic qualification.

1.18.1 Advisory, informing and support activities

Covid pass or DCP condition (recovered, vaccinated, tested)

Conditioning the performance of work tasks upon vaccination does not in principle constitute discrimination

The Advocate has repeatedly been approached by one of the trade unions, alleging that the DCP condition is discriminatory. The trade union also alleged illegal misuse of personal data in relation to (not) vaccinated employees, violation of equality and other fundamental rights from the employment relationship, extortion of employees by superiors and the employer, and attempts to induce employees to opt for the otherwise voluntary full vaccination against covid-19 by making the assignment of tasks conditional on vaccination. The Advocate explained to the trade union that other authorities were responsible to address the allegations. From the perspective of discrimination, the Advocate explained to the trade union the position of the Advocate on the DCP condition, namely that it could represent discrimination against those employees who cannot get vaccinated for health reasons or those who refuse vaccination on grounds of religion or belief. However, the Advocate can establish this only specifically in each individual case. He advised the trade union that if any of the employees claimed any of the exceptions, they should submit an individual complaint and justify their personal grounds or several of them. Other issues – alleged criminal offences and other irregularities not related to discriminatory law – cannot and must not be addressed by the Advocate. The advisory procedure has thus been completed. **(0702-146/2021)**

The condition of recovery or vaccination laid down by an Ordinance for state administration does not raise the issue of discrimination, but the issue of compliance with the constitutional principle of legality

The Advocate was approached by an individual working in state administration, who should meet the condition of recovery or vaccination for their work. The condition of recovery or vaccination for state administration employees was laid down by the Ordinance on the method of meeting the condition of morbidity, vaccination and testing to curb the spread of SARS-CoV-2 virus infections. The provisions show that the Government of the Republic of Slovenia had already taken into account one of the possible exceptions, in which case this condition could imply inadmissible unequal treatment by excluding employees who may not be vaccinated for health reasons. A so-called “appropriate accommodation” was envisaged for them. No exceptions were provided for the other groups. The Advocate explained that the condition of recovery or vaccination does not raise the issue of discrimination, but rather the question of the compatibility of the condition established by the Ordinance with the constitutional principle of legality in the light of the Communicable Diseases Act, the Employment Relations Act and the Health and Safety at Work Act. He explained that a request for the assessment of constitutionality had already been filed before the Constitutional Court, as the Constitutional Court is the only authority to annul the said Ordinance if the Government of the Republic of Slovenia does not amend the Ordinance itself. The Advocate also explained to the client that at the individual level, each employee has the right to appeal against the negative consequences of failure to get vaccinated, to the Labour Inspectorate of the Republic of Slovenia, and the possibility of judicial redress against the termination of the employment contract in accordance with the ERA-1. The advisory procedure has thus been completed. By means of a Decision U-I-210/21-25 from 29 November 2021, the Constitutional Court ruled that the condition of recovery or vaccination was inconsistent with the Constitution. **(0702-210/2021)**

The covid pass or DCP condition for visiting nursing homes, aimed at protecting the most vulnerable, does not represent discrimination

The Advocate was approached by a non-governmental organisation stating that the DCP condition for entry into a nursing home is discriminatory against residents, especially those who are bedridden. The Advocate presented its position on the DCP condition to the association. The Advocate noted that the current findings show that the risk of a more severe course of covid-19 and death increases exponentially with age, and the risk is also higher in individuals with certain chronic diseases. The primary objective of the measure related to the DCP condition for visiting nursing homes is to protect the health of residents. Therefore, the Advocate considers the fulfilment of the DCP condition by relatives and other visitors, in addition to all other protective measures, to be necessary in order to ensure safe visits. The Advocate confirmed the NGO’s conclusion that the relatives of residents who are not bedridden can avoid the DCP condition by meeting with the residents outside the nursing home, while bedridden residents do not have this option. However, this is a question of the possibility of monitoring compliance with measures or their circumvention, and not a question of discrimination. The Advocate pointed out that the equality body is not competent to decide what conditions should apply in certain institutions, as this is the domain of the medical profession. The advisory procedure has thus been completed. **(0702-178/2021)**



Assessment of compliance of the Ordinance laying down the covid pass or the DCP condition for access to healthcare with the Patient's Rights Act does not fall within the competence of the Advocate and therefore does not raise the issue of discrimination

Several individuals approached the Advocate regarding the DCP condition and access to health services. Some expressed the view that making access to health services conditional upon the DCP condition is not in line with the Patients' Rights Act and therefore constitutes discrimination. The Advocate explained to the complainant the regulation of the DCP condition from 6 September 2021 and exceptions thereto in access to health services. The Advocate pointed out that urgent health services should not be conditional upon the DCP condition, which was taken into account by the Ordinances applicable at that time. The Advocate explained that, according to the justification of the measures, the objective of the condition is to ensure safe access to health services. However, the question arose as to the compatibility of the arrangement laid down by an ordinance or by-law, with the Patient's Rights Act. The Advocate pointed out that this was a question that went beyond the Advocate's competences. However, the Advocate assessed that this issue might fall within the competence of the Ombudsman and referred the matter to this authority. The advisory procedures have thus been completed. (0702-144/2021, 0702-150/2021, 0702-170/2021)

The covid pass or DCP condition for conducting a school parent meeting and conducting a meeting in a hybrid form does not represent discrimination

The Advocate was informed by the principal of an elementary school about complaints by parent regarding the proposed hybrid manner of conducting the parental meeting, as not all parents met the DCP condition. The Advocate explained to the client what is the equality body's position on the DCP condition in the light of discrimination law. The position was taken also in the Discriminatory Assessment of the Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia, No. 050-27/2021/6. It was pointed out that, in line with the DCP normative regime, the condition was required for (physical) participation in a parental meeting by all participants. The school does not violate the law by requiring the DCP condition in accordance with the applicable regulations. Until a position is taken by the Constitutional Court that the DCP condition in general or in a specific situation is unconstitutional, all applicable decrees and legal acts providing for measures to reduce the consequences of the pandemic shall apply. As an alternative, the Advocate has optionally suggested that the school should conduct an online-only meeting for all parents. The Advocate also pointed out that this solution could lead to inequalities in relation to those parents who do not have an internet connection or adequate computer equipment. If such parents exist in the specific case, it should be checked if they meet the DCP condition. They can be assisted by attending a parenting meeting online at the school premises or using school computer equipment. The advisory procedure has thus been completed. (0702-224/2021)

The requirement to meet the covid pass or DCP condition does not represent discrimination

The Advocate received a large number of questions, complaints and initiatives by individuals who expressed the opinion that the conditionality upon the DCP for access to the workplace, the market for goods and services, health care, etc. constitutes discrimination. In the explanations regarding the conditions of vaccination and testing, the Advocate presented the view that the conditions do not, in principle, constitute discrimination based on the personal ground of the individual. The position was taken also in the Discriminatory Assessment of the Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia, No. 050-27/2021/6. In its position, the Advocate highlighted potential exceptions when the condition could be discriminatory on grounds of health and religion or belief. Regarding the concerns of the initiators as per compliance of the Ordinances laying down the DCP condition with the Constitution, the Advocate explained that adopted regulations on measures in the field of containment of the covid-19 epidemic can only be assessed by taking into account the aspect of respecting the principle of equality from Article 14 of the Constitution of the Republic of Slovenia and the PADA, but not from the aspect of compliance with the Constitution in general. The Advocate is not a national authority responsible for making a final decision on non-compliance of regulations with the Constitution and affecting in any way the content of the regulation. Only the Constitutional Court of the Republic of Slovenia has the power to decide whether a particular regulation is unconstitutional. The latter has the power to make a final decision on non-compliance of regulations with the Constitution of the Republic of Slovenia or another Acts. The Advocate explained that until the Constitutional Court makes a decision in a particular case, all applicable ordinances and regulations on measures to alleviate the consequences of the epidemic continue to apply and people are obliged to respect them. In the replies to individuals, the Advocate explained the content of the ordinances, exceptions to the DCP condition and the obligation of employers to cover the testing costs. The advisory procedures have thus been completed. (0702-118/2021, 0702-120/2021, 0702-196/2021, 0702-202/2021, 0702-203/2021, 0702-264/2021)

Refusal to submit proof of compliance with the covid pass or DCP condition would constitute discrimination if it based on one of the personal grounds

The Advocate was approached by an individual alleging discrimination. He stated that a petrol station employee requested the DCP from him. The individual showed him an SMS message showing that the result of the test for covid-19 was negative. The SMS message showed the initials of the person's name. The complainant additionally noted that they do not own a digital certificate due to the protection of personal data. The Advocate explained to the client that refusal to accept a particular proof of the DCP condition does not constitute discrimination as long as not based on one of the personal grounds under the PADA. Clarifications provided by competent authorities show that those certificates are acceptable as authentic which clearly show the person's identity and date of vaccination or testing. If a person does not have a European digital certificate, in digital or paper form, a vaccination card or a paper report on a negative test for the coronavirus is also acceptable. According to the position of the Ministry of Health, the SMS message on the result of the rapid antigen testing does not, however, serve as an appropriate evidence as regards the DCP condition, as it does not indicate the identity of the person. The advisory procedure has thus been completed. (0702-276/2021)



The requirement to submit a covid pass or DCP certificate when crossing the border and the quarantine imposed are not discriminatory

Several individuals approached the Advocate asking for advice regarding the DCP requirement for crossing the border. One individual failed to submit the DCP certificate when crossing the border and as a result, quarantine was imposed on them. The Advocate explained to the client that the rules for crossing the border which required the DCP condition to avoid quarantine do not constitute discrimination, since the conditions of vaccination and testing are available to persons who did not recover from covid-19 which are not related to any personal ground of the individual. The Advocate explained to the client the rules on crossing the border, the evidence taken into account when entering Slovenia to prove the fulfilment of the DCP condition and the fact that a person who fails to submit one of the relevant evidence is subject to quarantine which lasts ten days. The Advocate advised the client to make use of the opportunity of early termination of quarantine, which was applicable at that time. One individual referred to the Resolution of the Parliamentary Assembly of the Council of Europe No. 2361, which prohibits discrimination on the basis of (non)vaccination and to EU Regulation No. 2021/953. As regards the Resolution No. 2361, the Advocate pointed out that it is a legally non-binding Resolution, and as regards the Regulation, that the reference to the prohibition of discrimination was part of the recital and not the legally binding part of the Regulation. The Advocate explained that the essence of the Regulation is to establish a legal basis for a EU digital covid certificate and that Resolution 2361 cannot be understood as opposing the EU digital covid certificate or the DCP condition. The advisory procedures have thus been completed. (0702-156/2021, 0702-197/2021)

Supervision of compliance with measures to contain covid-19 is not an issue of discrimination

The Advocate was approached by an individual regarding the situation in the country related to the covid-19 epidemic. The complainant expressed their disagreement with the system of border crossing in place and the restriction of access to goods and services under the DCP condition. The individual pointed out that the DCP condition forces people to undergo testing where many of them get unnecessarily infected. Moreover, he highlighted the issues of improper wearing of the mask, incorrect way of hand washing and the general failure to comply with protective measures, as well as the lack of supervision in this regard. The Advocate presented the position of the equality body on the DCP condition, introduced in the Discriminatory Assessment of the Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia. As regards the other allegations, the Advocate explained that the equality body has no jurisdiction in this regard and referred the client to other authorities responsible for monitoring compliance with the measures imposed to contain covid-19. The advisory procedure has thus been completed. (0702-171/2021)

The covid pass or DCP condition does not constitute discrimination against vaccinated people

The Advocate received a complaint by an individual alleging reverse discrimination in relation to the DCP condition. The complainant considered that, as a vaccinated person, he is in a subordinate position compared to the unvaccinated, and that they have fewer rights and are subject to greater restrictions on movement if they want to avoid covid-19 infection. The Advocate's position on the DCP condition was presented to the client explaining that the decision to get vaccinated can not be considered a personal ground within the meaning of the PADA. An individual may decide to get vaccinated or not to. It is therefore a matter of choice, not a compulsion conditioned by particular unchangeable and inalienable characteristics of the individual. The advisory procedure has thus been completed. (0702-173/2021)

Mandatory use of protective equipment

Improperly fitted face mask at the workplace is not a personal ground, hence it is not a matter of discrimination

The Advocate was contacted by an employee who received a written notification regarding the fulfilment of employment obligations and the termination of employment contract due to improper use of a face mask. Consequently, the employee was denied the company performance bonus. The Advocate confirmed that a written notification to the employee regarding the fulfilment of obligations and the possibility of employment contract termination must not be based solely on personal grounds under the PADA. However, the Advocate did not consider improper use of face mask to be a personal ground within the meaning of the PADA. The Advocate also pointed out that the criteria for company performance bonus should not be based on distinguishing employees with regard to their personal grounds. However, the employee was denied a part of their company performance bonus as a result of a notice before termination issued precisely due to improper use of a face mask at the workplace which is not a personal ground under the PADA. The advisory procedure has thus been completed. (0702-76/2021)



Refusal to wear a face mask is the choice of the individual or in the case of children a choice of their parents, hence it does not constitute discrimination

One of the parents of an elementary school pupil approached the Advocate, as the child was denied the attendance to a play based on the parents' decision which prevented the child from wearing a face mask. The Advocate explained that the issue does not fall within the field of discrimination. If the denial to attend the play were based on unchangeable and inalienable personal characteristics (such as gender, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, property status, education or any other personal grounds), the issue might be a matter of personal grounds under the PADA and thus (upon the satisfaction of other elements) a matter of discrimination. Refusal to wear a face mask is the choice of the individual or in the case of children of their parents. The Advocate explained to the parents that the refusal to wear a face mask does not represent an inalienable and unchangeable personal ground (in terms of "other personal grounds" under the provisions of the PADA). The advisory procedure has thus been completed. (0702-175/2021)

Wearing or refusing to wear a face mask is not a personal ground, therefore it is not a matter of discrimination

Several individuals approached the Advocate alleging discrimination in relation to the obligation to wear a protective face mask indoors. The Advocate explained to the client that wearing or refusal to wear a face mask cannot be understood as a personal ground within the meaning of the PADA – nor as any "other personal ground", since such conduct does not correspond to the nature of personal grounds as such, i.e. as congenital or acquired personal traits, characteristics, conditions or statuses that are, for the most part, permanently and inextricably linked to a specific individual and their personality, particularly their identity, or that the individual cannot easily change. If the refusal to comply with the obligation were based on unchangeable and inalienable personal qualities, discrimination could be discussed. Refusal to wear a face mask is an individual's choice and does not constitute an inalienable and unchangeable personal ground. The obligation to wear face masks in public indoor spaces was imposed on the basis of an expert opinion of the epidemiological health profession that masks significantly prevent the spread of the SARS-CoV-2 virus and thus the covid-19 epidemic, and the Advocate is not competent for assessing the correctness of this position. The advisory procedures have thus been completed. (0702-107/2021, 0702-149/2021, 0702-204/2021)

Self-testing

Time of arrival at work due to self-testing does not raise the issue of discrimination

The Advocate was approached by the client due to a new regime of arrival at work in relation to the obligation of self-testing. The client stated that they were forced to arrive at work one hour earlier compared to colleagues who are vaccinated against covid-19. The Advocate explained that the issue of the DCP condition has already been addressed and a conclusion was made that no discrimination occurs in this regard. Hence, the client was advised to turn to the employer, namely due to a possible violation of labour law legislation, as testing should normally be organised within working hours and at the employer's expense. The advisory procedure has thus been completed. (0702-251/2021)

Conditioning the work of a personal assistant upon self-testing does not constitute discrimination

The Advocate was approached by a severely disabled person who overcomes everyday obstacles with the help of personal assistants. She explained that she needs the help of a personal assistant not only at her home, but also for arrival to work, visiting a store, going to the doctor, etc., which has been extremely difficult for her since the imposition of the self-testing obligation on personal assistants. She explained that the test applies only at her home. The Advocate examined the current arrangements. A conclusion was reached that personal assistants are considered to fulfil the DCP condition as long as they fulfil the obligation of self-testing using a rapid antigen test. At the same time, the Advocate pointed out that performing the work of a personal assistant involves more than just helping the user of the personal assistance service at their home. The basis for such conclusion was the definition of personal assistance service under the Personal Assistance Act. In view of the above, a position was taken that the self-testing of a personal assistant should suffice to accompany the user of the assistance in daily tasks. The advisory procedure has thus been completed. (0702-193/2021)

Refusal of self-testing in the case of schoolchildren or pupils is a decision of parents, which does not have the nature of a personal ground, therefore it is not a matter of discrimination

Following the introduction of compulsory self-testing of schoolchildren and pupils, the Advocate received a large number of letters from parents who considered this obligation to be a prima facie case of discrimination. The Advocate explained to the clients that the refusal of self-testing does not constitute an inalienable and unchangeable personal ground in terms of "other personal grounds" under the provisions of the PADA. In this case, it is not a congenital or acquired personal trait, characteristic, condition or status that is, for the most part, permanently and inextricably linked to a specific individual and their personality, particularly their identity, or that the individual cannot easily change. Refusal to undergo self-testing is a decision of an individual or in the case of a child of their parents.



The child is consequently subject to distant learning which is not the result of their personal grounds but rather of the refusal to undergo self-testing expressed by their parents. Consequently, the cases do not involve discrimination. As a possible exception to the above might be a case when a child cannot undergo self-testing due to their health status. In such a case, a personal ground might be given (refusal of testing based on the personal ground of health status), however such medical indications must be confirmed by a doctor. The Advocate also stressed in the clarifications provided that the matters were considered only from the perspective of the equality body's competence, which however does not mean that the requirement of self-testing is compliant with the Constitution, or legally and professionally justified. These issues or aspects of the case cannot be addressed by the Advocate, as this question is beyond the equality body's competences. The advisory procedures have thus been completed. (0702-270/2021, 0702-267/2021)

Job position

Employment at a research workplace or the source of funding for such workplace are not a personal ground, hence discrimination is not given

The Advocate received a call from a trade union to assess the discriminativeness of Article 64 of the recently adopted Scientific Research and Innovation Activities Act (SRIAA). The trade union stated that the provision of SRIAA providing for a statutory exception to the general public salary system for researchers working on fixed period projects allows for a derogation from the principle of equal pay for work in comparable jobs, titles and functions. Consequently, the trade union considers the provision to be discriminatory. The Advocate explained that in the case of SRIAA, the basis for the derogation from the public salary system under the Public Sector Salary System Act needs to be assessed from the perspective of discrimination and the question needs to be answered of whether the reason for the differential treatment is in fact a personal ground under the PADA. Derogation from the general public salary system under the Public Sector Salary System Act is based on the fact that such researchers are employed for a fixed term based on a specific contract. The reason for the differential treatment introduced by Article 64 of the SRIAA is therefore the nature of the workplace (researcher position) and the source of funding for the employee's salary. The Advocate explained that working at a particular workplace cannot be considered a personal ground within the meaning of the PADA, given the above-described nature of the personal grounds as such. This is all the more true of the source of funding. In the light of the foregoing, this matter appears to fall outside the field of discrimination. A violation of the prohibition of discrimination within the meaning of the PADA is given only in conjunction with a particular personal ground. The advisory procedure has thus been completed. (0702-295/2021)

The fact that someone is a State functionary is a matter of personal choice to run for office and therefore discrimination is not given

The Advocate received a letter from an individual who pointed out that, during the covid-19 period, some officials (e.g. Ministers), unlike others (e.g. judges, prosecutors, etc.), were not entitled to wage supplements by the State, otherwise granted to all employees (e.g. paid overtime, risk allowance, etc.). The Advocate drew the individual's attention to the distinction between the positions of civil servants and State functionaries. The starting point for the Advocate's advisory was a judgement by the Higher Court of the Republic of Slovenia Ips VIII 81/2016 of 30 August 2016, which sets out that a State functionary is not in the same position as a civil servant who is an employed person. The position of a State functionary is different from the outset than that of an employed civil servant, hence the difference in regulating the State functionary's employment relationship compared to the civil servant's employment relationship is justified. The legislator may provide for different arrangements depending on the different situations of persons and thus regulate them differently. The fact that someone is a State functionary is not a personal ground. The decision to run for a certain position is a matter of personal choice. And it is not a status that is permanently linked to an individual. Therefore, the case does not indicate any issue related to discrimination. The advisory procedure has thus been completed. **(0702-38/2021)**

The period of employment in diplomacy is not a personal ground, hence no discrimination is given

The Advocate was approached by a diplomat who received a notification on fulfilling the conditions for retirement, which he considered to be a discrimination at workplace. The Advocate confirmed that the legislation provides protection of employees against discrimination also in relation to the termination of the employment contract. However, the Advocate stressed that a personal ground must be given as the reason for the differential, unequal or worse treatment, if discrimination is to be argued. Moreover, the Advocate explained that the employment in diplomacy during the period of independence of the Republic of Slovenia and not during the former Socialist Federal Republic of Yugoslavia, as alleged by the client, cannot in itself be considered a personal ground within the meaning of the PADA. The same applies to workplace, occupation or work experience. Regarding the personal grounds of age and retirement, the Advocate recalled the decision of the Constitutional Court U I-146/12 of 14 November 2013. In the case, the Advocate identified the personal ground of belief as potentially relevant, therefore he called on the client to submit a complaint. In their reply, the client thanked the Advocate for the comprehensive explanations, but did not decide to conduct a procedure before the Advocate. The advisory procedure has thus been completed. **(0702-100/2021)**



Date of registration as a self-employed person

Registration as a self-employed person carried out at a specific date does not constitute discrimination

A number of self-employed persons who were newly registered that is after 1 September 2020 contacted the Advocate as they were not entitled to the extraordinary financial assistance in the form of a monthly basic income. The Advocate explained to the clients that the condition of “registration for performing activities at the latest on 1 September 2020” for eligibility for the extraordinary assistance in the form of monthly basic income cannot be understood as a personal ground within the meaning of the PADA. It is namely not a congenital or acquired personal trait, characteristic, condition or status that is, for the most part, permanently and inextricably linked to a specific individual and their personality, in particular identity. The individual can also change the registration and deregistering of a self-employed person. In the light of the foregoing, the case does not indicate any issue related to discrimination. The Advocate referred the case to the Ministry of Economic Development and Technology. The advisory procedures have thus been completed. (0702-19/2021, 0702-80/2021)

1.18.2 Discrimination investigation

Receiving a salary in foreign currency

Receiving a salary in foreign currency is not a personal ground according to the PADA

The Advocate was approached by a Slovenian citizen employed by an international organisation abroad. Their salary is paid in US dollars (USD). Since their salary is not paid in EUR, none of the Slovenian banks and savings banks were willing to grant them a loan for the purchase of an apartment in Slovenia. The complainant therefore alleged discrimination by banks and savings banks. In the proceedings, the Advocate found that the personal ground of place of residence was not the reason why the complainant was not granted a loan by the banks, the reason was the payment in foreign currency, namely USD. The Advocate does not consider the payment of salary in a particular currency to be a personal ground under the Protection against Discrimination Act, as it is not a personal trait, characteristic, condition or status, permanently and inseparably related to the complainant’s personality or identity which could not be changed by the complainant. The Advocate therefore completed the procedure with a decision rejecting the complaint. The decision has become final. (Decision No. 0700-10/2021/38 of 2 July 2021)

1.18.3 Assessing the discriminativeness of regulations

Covid pass or DCP condition (recovered, vaccinated, tested)

According to the Advocate, the covid pass or DCP condition in access to services does not constitute discrimination

The Advocate received several complaints by individuals regarding the alleged discriminativeness of the Ordinance on the method of meeting the condition of morbidity, vaccination and testing to curb the spread of SARS-CoV-2 (Ordinance). In the proposals submitted, complainants brought forward various allegedly discriminatory provisions of the Ordinance. They pointed to alleged discrimination against (healthy) individuals who do not meet the conditions of recovery or vaccination in accessing various goods and services. These include access to fuel, public transport, provision of non-essential health services, access to banks, shopping centres, post offices, etc. The complainants referred to alleged discrimination against non-vaccinated persons in testing, as testing which is a condition for access to most goods and services, is not free of charge in most cases. Vaccinated individuals do not need to undergo testing. One of the complainants pointed to alleged discriminativeness of the DCP condition in access to social security schemes. The applicants also alleged discrimination in access to goods and services as clients wishing to access goods and services have to undergo testing with a specific medical provider and the results remains valid only 48 hours while the costs of the testing have to be borne by the person themselves. Meanwhile, self-testing using rapid antigen tests suffices for employees and the result remains valid for one week under the relevant Ordinance, moreover, the costs are lower and borne by the employer. At the same time, discrimination of unvaccinated individuals without own transport was alleged in cases when testing is not available in their place of residence. Without testing, such individuals are denied access to goods and services. The Advocate assessed that the DCP condition in access to services does not constitute discrimination based on the personal grounds of individuals under the PADA. Identification of a personal ground is an essential element of discrimination investigation and discriminatory assessment within the meaning of the PADA. The DCP condition for access to services covers all segments of the population. Access to rights and benefits for persons who have not recovered from covid-19 is conditional upon vaccination or testing, which is available to all persons under the additional condition of a negative test, not only the vaccinated. The indications of individuals about alleged discrimination and restrictions imposed by the DCP condition for access to almost all services are thus not based on the personal grounds of individuals under the PADA and therefore, in compliance with the Advocate's competences, discrimination cannot be found in the case. Anti-discrimination law is intended to protect "protected groups" defined by their personal grounds. The condition of testing, which is not related to the personal grounds of individuals but is the result of their decision, is thus only one of the possible DCP conditions for access to goods and services. The position taken that the DCP condition does not in principle constitute discrimination based on the personal grounds of the individuals under the PADA does not at the same time imply the Advocate's judgement that the DCP condition (or the condition of vaccination or recovery in the state administration) is constitutional, legal and professionally justified. The Constitutional Court is the only authority to take the final decision on whether a regulation is compliant with the Constitution, whether it excessively interferes with individuals' constitutionally guaranteed rights and freedoms, and whether it is not consistent with other legal Acts. The procedures for assessment of discriminativeness have thus been completed. (050-27/2021/6, 050-32/2021/8)



According to the Advocate, the Ordinance determining the conditions of entry into the Republic of Slovenia to contain and control the covid-19 infectious disease is not discriminatory

The Advocate received a complaint, in which the complainant argued that failure to observe the intention to maintain contact with close family members among exceptions to the DCP condition constituted discrimination. According to the Ordinance applicable at the time of the complaint, maintaining contact with close family members was not observed among exceptions allowing border crossing without complying with the DCP condition and the imposing of quarantine. Such an arrangement entails a high cost for the complainant, as they must take a test before crossing the border. Therefore, the complainant considers the regulation to be discriminatory. The Advocate assessed that the fact that certain categories of persons are not explicitly listed among exceptions to the DCP condition when crossing the border without the quarantine period does not constitute discrimination under the PADA. In general, border crossing is available to all individuals upon fulfilling the DCP condition. The imposition of the DCP condition on exit from the country does not imply unequal treatment on the basis of a particular personal ground, as well as providing for certain exceptions from the DCP condition and quarantine, hence does not constitute discrimination in accordance with the PADA. The Advocate was not able to provide any comments on the sensibility of applicable regulations, as accordance with the Advocate's competences under the PADA regulations and exceptions can be assessed in terms of content, only with regard to their discriminativeness and not their sensibility or justification. The discriminatory assessment procedure has thus been completed. (050-35/2021/6)

Job position

The situation of foreigners, drivers in international transport residing in Slovenia, when crossing the border during the covid-19 epidemic is not discriminatory

The Advocate received a complaint regarding the situation of drivers in international transport in accordance with the Ordinance of imposing and implementing measures to prevent the spread of epidemic covid-19 at the border crossing points at the external border and inspection posts within national borders of the Republic of Slovenia and regarding the amendment thereto from 12 November 2020. The complainant highlighted the arrangement, according to which a driver who crosses the border for family reasons to maintain contact with close family members outside the EU Member States or the Schengen area and returns within 72 hours, can no longer be exempt from the home quarantine or negative coronavirus test submission obligation. The complainant compared the situation of drivers with residence in Slovenia with drivers who do not have residence in Slovenia. The Advocate assessed that the regulation was not discriminatory. A conclusion was made that the situation of the two groups of drivers was not comparable. The difference between them is related to the arrival and departure from work (or referral to perform duties and returning back), as drivers without residence in the Republic of Slovenia arrive to work directly from abroad and where they return after completion of their tasks, while drivers residing in Slovenia arrive to work from their place of residence where they latter return, therefore they do not cross the border for reasons related to arriving to work and returning back. For both groups, various exceptions for border crossing were also provided for in the ordinances applicable at the time. The discriminatory assessment procedure has thus been completed. (050-27/2020/8)

Profession

Differential treatment of managers with high incomes compared to regularly employed does not constitute discrimination

The Advocate received a complaint in relation to discrimination against managers under the Pension and Disability Insurance Act (PDIA-2) This Act was alleged to be discriminatory against managers compared to self-employed persons, partners and farmers subject to the set maximum basis for payment of pension and disability insurance contributions under Article 145 of the PDIA-2. Consequently, compared to them, insured persons in managerial professions who are in an employment relationship pay higher contributions according to the PDIA-2. For all, however, there is a certain maximum pension base in the amount of four times the minimum pension base in accordance with the provision of Article 36 of the PDIA-2. The complainant presented the existing pension system as highly unfair towards employees in managerial professions, where high rewards are usual as a result of performance. The complainant suggested that the Advocate should conduct a discriminatory assessment of the PDIA-2. In the case, the Advocate assessed that no personal ground (under the PADA) could be identified in the present case leading to the presented unequal treatment. The reason for the differential treatment of insured persons in Articles 144 and 145 of the PDIA-2 is the type of employment. The fact whether a person is in an employment relationship, i.e. employed by an employer, self-employed, a partner or a farmer, is not a personal ground under the PADA. Likewise, profession, e.g. managerial profession, is not a personal ground. Both the (managerial) profession itself and the type of employment represent a free choice of the individual while not fulfilling the nature of a personal ground. In view of the above, the Advocate did not carry out a more detailed assessment of discriminativeness. The discriminatory assessment procedure has thus been completed. (050-20/2021/3)

Academic qualification

Differential treatment of persons with regard to their research and academic qualifications does not represent discrimination

The Advocate received a complaint regarding the promotion to the research titles, which is regulated by the Rules on research titles. Article 7 of the Rules treats as equivalent pedagogical and research titles by translating the titles as follows: full professor, scientific councillor is equivalent to a scientific councillor, associate professor, senior research associate is equivalent to a senior research associate, assistant professor, research associate is equivalent to a research associate, etc. However, the Advocate noted that, unlike research titles, to obtain a higher pedagogical title at the university, one does not need to be elected to a lower title several times (as is the case for researchers). The complainant was interested to see whether the Rules were discriminatory, given that one group (university employees) is not subject to the condition of reappointment to a lower title for election to a higher title, while another group (researchers) makes promotion to a higher title conditional on reappointment to a lower title. The Advocate found that the situation of the two groups cannot be compared as the situation of pedagogical staff is regulated by the Higher Education Staff, while the situation of researchers is regulated by the Research and Development Activity Act. In addition, for discrimination to exist it is essential that the disadvantage is based on a particular personal ground. The Advocate assessed that the described criterion of distinction, i.e. the obtained title (research/pedagogical), does not correspond to the characteristics of a personal ground under the PADA. In view of the above, the Advocate did not carry out a more detailed assessment of discriminativeness. The discriminatory assessment procedure has thus been completed. (050-11/2021/4)



2 MINISTRIES AND OTHER INSTITUTIONS

NOTICE

In the original text, this chapter presents the cases addressed according to the respective Ministries and institutions. Since the cases are for the most part covered by Chapter 1 Personal grounds of discrimination, the content of Chapter 2 Ministry and other institutions has not been translated.

3 ACRONYMS AND ABBREVIATIONS

Advocate	The Advocate of the Principle of Equality
ARSPWOAS	Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports
ART	Assisted reproductive technology
CC-1	Criminal Code
covid-19/SARS-CoV-2	coronavirus disease
CWRA	Council for Women in Rural Areas
DCP	recovered/vaccinated/tested
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECRI	Council of Europe's Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EP	European Parliament
Equinet	European Network of Equality Bodies
ERPFA	Exercise of Rights from Public Funds Act
EU	European Union
FRA	European Union Agency for Fundamental Rights
GAPA	General Administrative Procedure Act
GOSIM	Government Office for the Support and Integration of Migrants
HFRS	Housing Fund of the Republic of Slovenia
HIIS	Health Insurance Institute of Slovenia
ICHR	Interdepartmental Commission on Human Rights
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, queer and other diverse identities
MAFF	Ministry of Agriculture, Forestry and Food
MC	Ministry of Culture
MD	Ministry of Defence
MEDT	Ministry of Economic Development and Technology
MESP	Ministry of the Environment and Spatial Planning
MESS	Ministry of Education, Science and Sport
MF	Ministry of Finance
MFA	Ministry of Foreign Affairs
MH	Ministry of Health

MI	Ministry of the Interior
MLFSAEO	Ministry of Labour, Family, Social Affairs and Equal Opportunities
MoI	Ministry of Infrastructure
MoJ	Ministry of Justice
MPA	Ministry of Public Administration
National Assembly	National Assembly of the Republic of Slovenia
NH	Nursing home
NIPH	National Institute of Public Health
NPMR	National Programme of Measures for the Roma
PAA	Personal Assistance Act
PADA	Protection against Discrimination Act
PD	Police Directorate
PDIA	Scientific Council of the Slovenian Research Agency
PDIA-2	Pension and Disability Insurance Act
PPFBA-1	Parental Protection and Family Benefits Act
PSSSA	Public Sector Salary System Act
RS	Republic of Slovenia
SIFOROMA	National Platform for the Roma
SMMEE7	Set No.7 of measures to mitigate the effects of the epidemic
SPIRIT Slovenia	Public Agency for Entrepreneurship, Internationalization, Foreign Investments and Technology
The Government	Government of the Republic of Slovenia



Annual Report of the Advocate of the Principle of Equality for 2021 – Case Review

Issued by

The Advocate of the Principle of Equality of the Republic of Slovenia

On behalf of the Advocate

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